

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No. 77-7002

JOHN COLEMAN

Plaintiff -
APPELLANT

against

GOLKIN, BOMBACK, + CO., INC., , AND
SAUL GOLKIN

Defendants -
APPELLEES

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

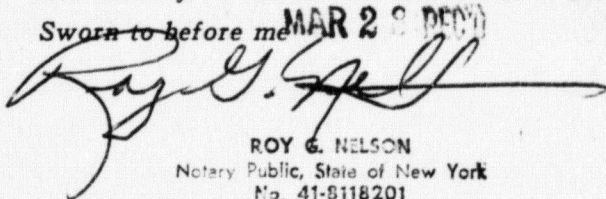
SS.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 776 MACE AVE
BRONX, NY

That on MARCH 28 1977 deponent served the annexed
REPLY BRIEF OF JOHN COLEMAN
on BANDLER + KASS
attorney(s) for DEFENDANTS - APPELLEES
in this action at 605 THIRD AVE., NY, NY 10016
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in ~~proper~~ official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

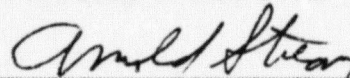
Sworn to before me MAR 29 1977



ROY G. NELSON

Notary Public, State of New York
No. 41-8118201

Qualified in Nassau County
Certificate No. 100 New York County
Commission Expires March 30, 1978



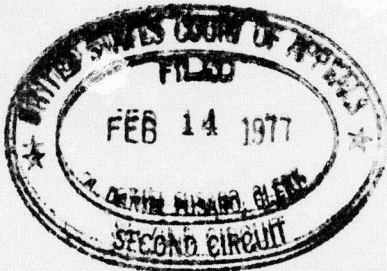
The name signed must be printed beneath

ARNOLD STREAM

77-7002

UNITED STATES COURT OF APPEALS

For The Second Circuit



JOHN COLEMAN,

Plaintiff-Appellant,

against

GOLKIN, BOMBACK & CO., INC., A
Corporation; and SAUL GOLKIN,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New YORK

APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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JOHN COLEMAN VS. GOLKIN BOMBACK & CO, INC. ETC.

(Pg. #2)

72 C.V. 86

DATE	PROCEEDINGS	Date Order Judgment
MAR-72	FILED PAPERS ORIGINALLY FILED, FROM THE NORTHERN DISTRICT OF ILLINOIS, THIS DATE WERE FILED, COMPLAINT. Stipulation docket sheet, etc. RECORD OF PROCEEDINGS U.S.D.COURT.	
Mar. 2-72	Filed Deposition of Marshall L. Hurman. (mailed notice).	
Mar. 16-72	Filed Deposition of Mr. Golkin.	
Mar. 21-72	Filed plttf Notice of appearance.	LD&L
May 18-72	Filed Dfts. Nitice to take deposition.	
May 18-72	Filed ANSWER by both Dfts.	MSR&F
Apr. 28-75	Filed defts. affdvt. and notice of motion for an order pursuant to Rule 14(a) authorizing defts. as third-pty plttfs. to cause to be served upon Milton J. Bomback, Bernard S. Nanton and Robert Alberts a summons and third-pty complaint. Ret. 5-8-75.	
May 7-75	Filed plttf's affdvt. of Murial Bell in opposition to defts' motion to file a third-party action.	
May 13-75	Filed memo endorsed on motion filed 4-28-75. This motion for leave to file and serve a third-party summons and complaint upon three named individuals is hereby denied. It is so ordered- CANNELLA, J. (m/n)	
Aug. 4-75	Before CANNELLA, J. non-jury trial begun. and concluded. Judge's decision- reserved. Submit brief.	
Aug. 18-75	Filed defts' memorandum of law.	
Aug. 20-75	Filed Plttf's Affidavit in support of Plttf's motion by Stephen J. Crimmins	
Aug. 20-75	Filed Plttf's Memorandum in support of his oral trial motion to introduce Plttf's Exhibit 2, or in the alternative, to have the court examine plttf's exh. 2 etc.	
Aug. 25-75	Filed defts' reply affdvt. of William C. Sherr to the affdvt. submitted by Stephen J. C and the plttf's exhibit Exhibit 2, etc. as indicated.	
Sept. 10-75	Filed plttf's affdvt. & notice of motion for an order reopening the trial to take additional testimony....	
Sept. 10-75	Filed plttf's memorandum in support of motion to reopen trial.	
09-17-75	Filed affdvt. of WILLIAM C. SHERR in opposition to the plttf's motion to reopen the trial and admit an additional exhibit.	
09-18-75	Filed reply affdvt. of STEPHEN J. CRIMMINS in support of plttfs motion to reopen the trial.	
9-18-75	Filed transcript of record of proceedings, dated <i>Aug 4, 1975</i>	
9-29-75	Filed Defts Proposed Findings of Fact and Conclusion of Law	
9-29-75	Filed Defts Post Trial Brief	
Sept. 29-75	Filed plttf's findings of fact.	
Sept. 29-75	Filed plttf's post-trial memorandum and objective factual chronology.	
Sept. 29-75	Filed stip & order extending the time for filing of posttrial memoranda and proposed findings of fact and conclusions of law to 9-29-75. So ordered- CANNELLA, J.	
10-19-76	Filed Opinion No. 45203 ...for the reasons stated. Plttf is awarded Judge against deft Golkin, Bomback & Co. Inc. in amt. of \$80,000. The complaint dismissed with prejudice as to deft Saul Golkin. Costs are to be borne respective parties etc. So Ordered. CANNELLA, J. m--n	
10-22-76	Filed Judgment # 76,952-- that plttf. have judgment against deft. Golkin, Bomback & Co., Inc. in the amount of \$80,000 and that the complaint is dismissed, with prejudice as to deft. Sol Golkin. Costs are to be borne by the respective parties. Clerk (m/n)	
11-1-76	Filed Plttf's Affidavit and Notice of Motion for an order for new trial and rehearing and for leave to amend the complaint to conform to the evidence. RET: 11-14-76	
11-1-76	Filed Plttfs Memorandum in support of joint motion for new trial and rehearing & for leave to amend complaint to conform to evi.	

(PAGE # 3)

(CANNELLA, J.)

Civil Docket Continuation

PROCEEDINGS

Date Order
Judgment

DATE	PROCEEDINGS	DATE ORDER JUDGMENT
11-10-76	Filed defts' affidvt. of William D. Sharr in opposition to motion for a new trial and rehearing.	
11-10-76	Filed defts memorandum of law in opposition to post-judgment motions.	
11-17-76	Filed Pltff's Reply Memorandum in support of their joint motion for new trial and rehearing and for leave to amend the complaint to conform to the evidence.	
11-24-76	Filed memo endorsed on motion filed 11-01-76. The within motion for a new trial or, in the alternative, for rehearing, is hereby denied. So ordered- CANNELLA, J. (m/n)	

D

Coleman v. Golkin Bombach

Docket
re: D.C. Ill.
n. o. Chicago

71 C 1037

4875-11

gk

DATE	PROCEEDINGS	Date Order or Payment Noted
4-30-71	Filed Complaint and 3 copies (JS-5)	\$15.00
4-30-71	Filed Designation	
4-30-71	Filed Affidavit rule 39	
4-30-71	Issued summons and 3 copies with 3 copies of complaint P	
5-6-71	Filed notice of motion.	
5-6-71	Filed motion to take depositions Marshall L. Burman and Robert M. Albert on May 17, 1971.	
5-6-71	Filed affidavit.	
5-6-71	Filed notice of deposition for the plaintiff.	
5-6-71	Filed notice of deposition for the plaintiff.	
5-6-71	Enter order, motion for leave to take the depositions of Marshall L. Burman and Robert M. Albert, argued and allowed. - Hoffman. J. Mailed notices 5-10-71 c	
5-18-71	Filed marshal's return on service returned / unexecuted as to Golkin, Bombach, and Co. Fee \$1.00 c	
5-28-71	Issued summons and copy with copy of complaint for service on Golkin, Bombach & Co. Inc. P	
6-2-71	Filed affidavit re rule 39 of Saul Golkin.	
6-2-71	Filed the appearance of Saul Golkin and that of his attorney, c	
6-10-71	Filed 2 Marshal's returns on service of summons returned served as to Saul Golkin and Golkin, Bombach & Co. \$8.36 k	
6-14-71	Filed stipulation.	
6-14-71	Enter order stipulation for extension of time to June 16, 1971 for defendant Saul Golkin to answer or otherwise plead by the respective attorneys of the parties. - Austin, J. Mailed notices 6-15-71 k	
6-16-71	Filed notice and motion of defendant Saul Golkin to dismiss for lack of jurisdiction or in the alternative to transfer to Southern District of New York.	
6-16-71	Filed affidavit of Saul Golkin. k..	
6-16-71	Motion to dismiss for want of jurisdiction or in the alternative to transfer to the Southern District of New York taken under advisement. Leave to defendant to file supporting brief on or before July 15, 1971 and leave to plaintiff to file responsive brief on or before August 5, 1971 and leave to defendants to file reply on or August 15, 1971 Hearing on said motion set for September 17, 1971 at 10 A.M. - Austin, J. Mailed notices 6-17-71 k	

(CONTINUED)

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71 C 1037

U.S. DIST. CT. SOUTHERN DIST. OF N.Y.

DATE	PROCEEDINGS	Date Order or Judgment Noted
7-6-71	Filed marshal's return on service . . . returned served as to Golkin, Bomback, and Co. Inc. Fee \$ 4.36 c	
9-14-71	Filed the appearance of Golkin Bomback and Co. Inc. and that of their attorney.	
9-14-71	Filed affidavit re. rule 39.	
9-14-71	Filed motion for entry of order of default. filed by the plaintiff.	
9-14-71	Filed notice of motion of the plaintiff.	
9-14-71	Motion for entry of order of default against defendant Golkin, Bomback and Co. Inc. withdrawn, and leave to said defendant's to file appearance and affidavit under rule 39 instant. - Austin, J.	
	Mailed notices	
9-14-71	Filed motion for . . . to file amended complaint.	
9-14-71	Filed notice of . . . of the plaintiff re filing amended complaint.	
9-14-71	Enter order, leave to file amended complaint instant. and hearing on motion to dismiss original complaint scheduled for September 17, 1971 is stricken from call. - Austin, J.	
	Mailed notices 9-15-71 c	
9-28-71	Filed notice and motion of defendant Golkin, Bomback and Co. to transfer this cause to the Southern District of New York.	
9-28-71	Motion to dismiss for want of jurisdiction, or in the alternative to transfer to the Southern District of New York taken under advisement Leave to defendant's to file supporting brief in 15 days, leave to file response in 15 days thereafter and leave to file reply in 5 days thereafter. - Austin, J.	
	Mailed notices 9-29-71 c	
10-13-71	Filed memorandum of defendant Golkin, Bomback and Co. Inc. in support of it's motion to transfer to the Southern District of New York.	
10-13-71	Filed brief in support of defendant Saul Golkins' motion for want of jurisdiction, or in the alternative, to transfer to the Southern District of New York. c	
10-29-71	Filed stipulation.	
10-29-71	Enter order, motion of plaintiff to extend time for brief in opposition to motion to dismiss to November 12, 1971. pursuant to Stipulation. - Austin, J.	
	Mailed notices 10-29-71 c	
11-12-71	Cause continued to passed case calendar for February 1972.-Austin, J. Mailed notices 11-15-71 c	

(CONTINUED)

DATE	PROCEEDINGS	Date Order or Judgment Noted
11-15-71	Filed notice of motion of the plaintiff.	
11-15-71	Filed plaintiff's brief in opposition to motion to dismiss or to transfer.	
11-15-71	Plaintiff's motion for leave to file brief in opposition to defendant motion to dismiss instant and to file a brief in excess of 15 pages.	
	-Austin, J.	
	Mailed notices 11-16-71	c
11-18-71	Filed the deposition of Saul Golkin for the plaintiff. with exhibits.	c
11-18-71	Filed notice of filing of deposition of Saul Golkin,	c
11-23-71	Filed stipulation.	
11-23-71	Enter order, stipulation to extend time to file reply brief to and including November 29, 1971. - Austin, J.	
	Mailed Notices 11-24-71	c
11-30-71	Filed reply brief of defendant Saul Golkin.	c
12-13-71	Cause continued to December 16, 1971 at 9:30 am for pre-trial conference in chambers, Room 2588. - Austin, J.	
	Mailed notices 12-14-71	c
12-16-71	Pre-trial conference held. Leave to plaintiff to file supplemental memorandum in 20 days and leave to defendant to respond to same in 20 days thereafter. - Austin, J.	
	Mailed notices 12-17-71	c
1-6-72	Filed plaintiff's supplemental memorandum in opposition to defendants motion to dismiss or in the alternative to transfer to the southern District of New York.	c
1-6-72	Filed notice of filing deposition.	
1-6-72	Filed the deposition of Marshall L. Burman for the plaintiff.	c
1-26-72	Filed defendant Saul Golkin's supplemental memorandum in support of his motion to dismiss, or in the alternative, to transfer to the Southern District of New York.	c
1-31-72	Defendant Golkins's motion to dismiss counts II, III and IV of the amended complaint is granted on the ground that this court lacks personal jurisdiction over the individual defendant Golkin. Service of process on defendant Golkin is quashed. - Austin, J.	
	Mailed notices 2-1-72.	c

(CONTINUED)

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D. C. 1037A Rev. 12-1-70 Court Consolidation

DATE	PROCEEDINGS	Date Order or Judgment Noted
2-2-72	Defendant's motion to transfer pursuant to 28 USC, 1404 (a) is denied. - Austin, J. Mailed notices 2-3-72.	
2-2-72	Cause continued to passed case calendar for March 1972.- Austin, J. Mailed notices 2-3-72.	c c
2-9-72	Filed stipulation.	c
2-18-72	Enter order stipulation to vacate order of February 2, 1972 denying Golkins, Bomback and Co. Inc's motion to transfer and for entry of an order transferring this cause in it's entirety to the Southern District of New York. (DRAFT) - Austin, J. Mailed notices 2-11-72. (JS-6)	c

TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK
BY *[Signature]*
DEPUTY CLERK
U. S. DISTRICT COURT, NORTHERN
DISTRICT OF ILLINOIS
DATE: *Apr 28, 1972*

5-17-71 BJS
A 0001

NOMINEE AGREEMENT

THIS NOMINEE AGREEMENT made and entered into this 31st day of July, 1962, by and between DIVINE & FISHMAN, INC., a New York corporation ("Divine & Fishman") and JOHN COLEMAN ("Coleman").

WHEREAS, Divine & Fishman is the holder of an option to purchase 50,000 Common Shares of Gellman Manufacturing Company at a price of \$2.00 per share; said option exercisable between January 1, 1963 and December 31, 1967 and containing such other terms and conditions as are set forth in said option agreement;

NOW THEREFORE, the parties hereto agree as follows:

1. Divine & Fishman agrees, with respect to the foregoing option to purchase 50,000 Common Shares of Gellman Manufacturing Company, that it is holding 10% of said option or the right to purchase 5,000 Common Shares as nominee for the benefit of Coleman.

2. Divine & Fishman agrees that in the event it sells said option Coleman shall be entitled to receive 10% of the net proceeds (after deducting Coleman's proportionate share of fees and expenses) resulting from the sale of said option. In the event that Divine & Fishman elects to exercise part or all of said option, Coleman agrees that he shall pay or be responsible for 10% of the gross exercise price thereof and, thereupon, Coleman shall be the beneficial owner of 10% of the shares acquired on the exercise of said option and he shall be entitled to receive all dividends paid on said shares beneficially owned by him;

provided, however, Divine & Fishman shall remain the record holder of said shares so acquired. In the event any or all of said shares so acquired on the exercise of the option are sold, Coleman shall be entitled to the net proceeds resulting from the sale of the shares beneficially owned by him.

3. Divine & Fishman agrees that it shall consult with Coleman with respect to the exercise or sale of the option or any shares acquired thereunder. It being understood by all of the parties hereto that it may not be possible to divest said option or shares thereby permitting Coleman to be the record holder thereof and it may further be necessary that Divine & Fishman acting for itself and as nominee for Coleman make certain unilateral decisions with respect to the exercise of said option and/or the sale of shares acquired upon the exercise of said option, all of which is hereby consented to by Coleman.

IN WITNESS WHEREOF, the parties hereto have executed this Nominee Agreement the day and year first above written.

DIVINE & FISHMAN, INC.

By James Fishman

John B. Coleman
JOHN COLEMAN

AD0003 LIMITED

R \$15.

JUDGE AUSTIN

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS PM 4 01
EASTERN DIVISION

4875-17

JOHN COLEMAN,

Plaintiff,

- vs -

GOLKIN, BOMBACK & CO., INC., a
corporation; GOLKIN, BOMBACK &
CO., a partnership and SAUL
GOLKIN, a partner,

Defendants.

CLERK
U.S. DISTRICT COURT

No.

710 1037

COMPLAINT

NOW COMES the plaintiff John Coleman by his attorneys and for his Complaint against the defendants Golkin, Bomback & Co., Inc., a corporation; Golkin, Bomback & Co., a partnership; and Saul Golkin, a partner alleges as follows:

1. Plaintiff is a citizen of the State of Illinois. Defendant Golkin, Bomback & Co., a corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business in the State of New York. The defendants Golkin, Bomback & Co., a partnership and Saul Golkin are citizens of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

2. In January, 1962 plaintiff became employed by Divine & Fishman, Inc. ("Divine & Fishman"), a New York

BEST COPY AVAILABLE

corporation, doing business as a stock brokerage firm, for the purpose of setting up a corporate finance department which would, among other things, assist customers and clients of said firm to acquire other corporations and businesses.

3. Under the terms of plaintiff's employment with Divine & Fishman, plaintiff was to receive, among other things, on those transactions wherein he performed certain services, a percentage of any equity participation paid to Divine & Fishman as a fee for the services it rendered.

4. During the course of plaintiff's employment with Divine & Fishman, plaintiff performed certain services which ultimately led to a corporate reorganization of Midwest Triumph Distributors, Inc.; Mid-States Jaguar, Ltd.; and Gellman Manufacturing Company ("Gellman"), an Illinois corporation.

5. For the services rendered by Divine & Fishman in connection with said reorganization, an option to purchase 50,000 Common shares \$1.00 par value stock in Gellman was given to Divine & Fishman. A true and correct copy of the Option Agreement which contained all the terms and conditions of said option was executed at Chicago, Illinois on or about August 22, 1962 and a true and correct copy thereof is attached hereto marked Exhibit A.

6. During the course of the negotiation leading up to the consummation of the reorganization, Divine & Fishman

and plaintiff entered into a certain Nominee Agreement, a true and correct copy of which is attached hereto marked Exhibit B.

7. The express terms and provisions of said Nominee Agreement were as follows and no other:

"1. Divine & Fishman agrees, with respect to the foregoing option to purchase 50,000 Common Shares of Gellman Manufacturing Company, that it is holding 10% of said option or the right to purchase 5,000 Common Shares as nominee for the benefit of Coleman.

"2. Divine & Fishman agrees that in the event it sells said option Coleman shall be entitled to receive 10% of the net proceeds (after deducting Coleman's proportionate share of fees and expenses) resulting from the sale of said option. In the event that Divine & Fishman elects to exercise part or all of said option, Coleman agrees that he shall pay or be responsible for 10% of the gross exercise price thereof and, thereupon, Coleman shall be the beneficial owner of 10% of the shares acquired on the exercise of said option and he shall be entitled to receive all dividends paid on said shares beneficially owned by him; provided, however, Divine & Fishman

shall remain the record holder of said shares so acquired. In the event any or all of said shares so acquired on the exercise of the option are sold, Coleman shall be entitled to the net proceeds resulting from the sale of the shares beneficially owned by him.

"3. Divine & Fishman agrees that it shall consult with Coleman with respect to the exercise or sale of the option or any shares acquired thereunder. It being understood by all of the parties hereto that it may not be possible to divest said option or shares thereby permitting Coleman to be the record holder thereof and it may further be necessary that Divine & Fishman acting for itself and as nominee for Coleman make certain unilateral decisions with respect to the exercise of said option and/or the sale of shares acquired upon the exercise of said option, all of which is hereby consented to by Coleman.

8. Subsequent to August 22, 1962 Gellman underwent a corporate reorganization, the exact nature of which is unknown to plaintiff, which resulted in Gellman being succeeded by Amco Industries, Incorporated, a Delaware corporation ("Amco").

9. Subsequent to August 22, 1962 Divine & Fishman either changed its name to Golkin, Bomback & Co., Inc. or converted by the defendants, or some of them, in either event the defendants, or some of them, succeeded to all of Divine & Fishman's rights, privileges and obligations under said Option Agreement and under said Nominee Agreement.

10. Under the terms and conditions of the Option Agreement Gellman granted to Divine & Fishman said option was to be exercised between January 1, 1963 and December 31, 1967.

11. At some time between January 1, 1963 and December 31, 1967 the defendants, or some of them, without notice to or consultation with the plaintiff exercised the option and acquired 50,000 shares of the Common Stock of Amco at a price of \$2.00 per share.

12. By virtue of the terms of the Nominee Agreement and the relationship that existed between the parties, the plaintiff reposed the greatest trust and confidence in Divine & Fishman and its successors; who thereupon owed plaintiff a fiduciary responsibility.

13. Under the terms of the Nominee Agreement and by virtue of the fiduciary relationship owed the plaintiff, defendants, or some of them, held 5,000 shares of the Common Stock of Amco which it acquired as trustee for the benefit of plaintiff.

14. In breach and violation of the Nominee Agreement and the fiduciary relationship owed to plaintiff, the

defendants, or some of them, failed to consult with plaintiff prior to the exercise of said option; failed to notify plaintiff of the acquisition of said shares or request that plaintiff pay 10% of the purchase price; and failed to deliver to the plaintiff his share of any dividends paid on said stock while held by the defendants.

15. In further breach and violation of the Nominee Agreement, and of the fiduciary duty defendants, or some of them, owed to plaintiff, defendants have notified plaintiff that plaintiff has no right or interest in any of the Amco stock or in the proceeds from the sale of said stock.

16. Plaintiff is informed and on information and belief alleges that defendants, or some of them, either sold all of the 50,000 shares of stock of Amco they acquired under the aforesaid option agreement, or are in the process of selling it at the present time.

17. Plaintiff further alleges that the current market value of the Common Stock of Amco is \$20.00 per share; that the sale of the 5,000 shares the defendants, or some of them hold for the benefit of plaintiff will yield \$100,000; that if the defendants have sold said stock, defendants holds said \$100,000 in trust for the benefit of plaintiff.

18. Plaintiff is informed, and on information and belief alleges that the defendants, and each of them, are in a precarious financial position; that they are unable to meet their current obligations; and that unless restrained and

enjoined by this Court, the defendant in possession of said funds will commingle them with its other funds and will transfer said funds to its creditors thereby precluding plaintiff from ever recovering either the stock or the proceeds from the wrongful sale of said stock.

WHEREFORE, plaintiff prays as follows:

1. That the Court find and decree that plaintiff is the beneficial owner of 5,000 shares of the Common Stock of Amco Industries, Inc. held by the defendant;
2. That the defendant be required to account to plaintiff for all dividends and monies received by defendant for the benefit of plaintiff;
3. That the defendant be enjoined from transferring, selling or conveying 5,000 shares of the Common Stock of Amco Industries, Inc. to anyone other than plaintiff;
4. That if the defendant has sold the 5,000 shares of the Common Stock of Amco Industries, Inc. it be required to account to plaintiff for the proceeds of such sale;
5. That if the defendant has sold the 5,000 shares of the Common Stock of Amco Industries, Incorporated that the Court declare that an equitable lien exists in those funds; and that defendant be ordered to segregate 10% of the proceeds of the sale; and that defendant be enjoined from transferring said proceeds to any other person during the pending of this case.

6. That the plaintiff have such other and further or different relief in the premises as the Court may deem equitable and proper.

Richard J. Brennan
One of the Attorneys for Plaintiff

Richard J. Brennan
Peter O. Fetzner
John C. Malugen
Winston, Strawn, Smith & Patterson
One First National Plaza
Chicago, Illinois 60670
786-5600

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN COLEMAN,

Plaintiff,

vs.

No. 71 C 1037

GOLKIN, BOMBACK & CO., INC.,
a Corporation, GOLKIN, BOMBACK
& CO., a partnership, and
SAUL GOLKIN, a partner,
Defendants.

The deposition of MARSHALL L. BURMAN,
called by the plaintiff for examination, pursuant
to order of court, and pursuant to the Rules of
Civil Procedure for the District Courts of the
United States, taken before Barbara J. Small, a
notary public within and for the County of Cook
and State of Illinois, at Suite 5000, One First
National Plaza, Chicago, Illinois, on the 17th
day of May, A.D., 1971, at 1:00 o'clock P M.

APPEARANCES:

RICHARD J. BRENNAN, Esq. and JOHN MALUGEN,
Esq., of the firm of
Winston, Strawn, Smith & Patterson,

appeared on behalf of the plaintiff,

HAROLD C. HIRSHMAN, Esq., of the firm of
Sonnenschein, Levinson, Carlin, Nath
& Rosenthal.

Reported for
LA SALLE REPORTING SERVICE, by
Barbara J. Small.

MR. BRENNAN: Let the record show that this is the deposition of Mr. Marshall L. Burman being taken at this time and place pursuant to a subpoena that was served on Mr. Burman and pursuant to an order that was entered in this cause by Judge Hoffman.

Counsel, do you wish to make a statement on the record?

MR. HIRSHMAN: I do. My name is Harold Hirshman and I am an associate of the firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal. I have been contacted by a Mr. David Fisher of New York and requested to attend this deposition. I am attending this deposition and appearing for no party in this action, and I do not intend this appearance in this deposition to be an appearance for any of the defendants.

MR. BRENNAN: Might I inquire? You said you were contacted by David Fisher of New York?

MR. HIRSHMAN: Yes. He received a copy of the notice for the deposition as well as a copy of your motion in front of Judge Hoffman.

MR. BRENNAN: He is an attorney in New York?

MR. HIRSHMAN: He is an attorney in New York.

MR. BRENNAN: Okay. Would you swear the witness?

M A R S H A L L L. B U R M A N,

called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

By Mr. Brennan:

Q Would you state your full name and address for the record?

A It is Marshall L. Burman, B-U-R-M-A-N, 260 East Chestnut, Chicago, Illinois.

Q What is your business or occupation, Mr. Burman?

A I am an attorney.

Q And with whom are you associated?

A The firm of Arvey, Hodes & Mantynband.

Q And how long have you been associated with the Arvey, Hodes & Mantynband firm?

A For fourteen years.

Q When were you admitted to practice in the State of Illinois?

A In 1955.

Q Mr. Burman, you are here in response to a subpoena that was served upon you in this cause, is that correct?

A Yes.

Q Mr. Burman, directing your attention to January of 1962, at that time did you have occasion to represent a firm known as Divine & Fishman?

A Yes, sir.

Q Can you tell me the business of Divine & Fishman?

A In January of '62 I believe-- Strike that. Divine & Fishman was a licensed brokerage firm with the Securities and Exchange Commission and a member firm of the New York Stock Exchange and other principal exchanges.

Q What was the nature of the organization of Divine & Fishman at that time?

A It was a corporate entity.

Q And under the Law of what state was it incorporated?

A I am not certain, but I believe it was the Laws of the State of New York.

Q And did it have offices in the City of Chicago?

A Yes, it did.

Q Where in Chicago were its offices?

A Its principal office was in the Exchange National Bank on La Salle Street, Chicago.

Q Who were the main officers of Divine & Fishman

at that time?

A The President, I believe, was Hal Divine, and the Executive Vice-President was Seymour Fishman. There were other officers, but they were the principal officers.

Q At some time in 1962, are you aware of the fact that Divine & Fishman employed a John Coleman?

A Yes, sir.

Q When did you first become familiar with that employment?

A I don't recall the date, but I believe it was either in 1961 or 1962. Mr. Coleman was employed as a member of the Corporate Finance section of Divine & Fishman.

Q Mr. Burman, did you have anything to do with Divine & Fishman employing Mr. Burman in the way of negotiating the employment contract or anything of that type?

A You mean Mr. Coleman?

Q Yes, sir.

A No.

Q Did you ever prepare a written employment contract between Coleman and Divine & Fishman?

A Not to my knowledge.

A 0016

Q Were you familiar with the terms of Mr. Coleman's employment by Divine & Fishman?

A No, sir.

Q At some time during 1962, did you become familiar with a transaction that involved Midwest Triumph, Mid-States Jaguar and Gellman Manufacturing Company?

A Yes, sir.

Q And in connection with that particular transaction, who, if anyone, did you represent?

A A negotiation was commenced between Divine & Fishman, Inc. and the owners of Midwest Triumph and Mid-States Jaguar on the possibility of their acquiring a listed company.

Q That is Midwest Triumph and Mid-States Jaguar acquire a listed company?

A Right. At that time we represented, in connection with those conversations, represented Divine & Fishman, Inc.

Q Would it be correct to say then, Mr. Burman, that Midwest Triumph and Mid-States Jaguar were then a client or customer of Divine & Fishman who were interested in acquiring a listed company?

A For that purpose, yes.

A 0017

Q And do I take it that Midwest Triumph and Mid-States Jaguar were represented by their own attorneys in connection with that endeavor?

A That is correct.

Q During the course of Jaguar and Triumph's efforts to acquire a listed company, did you have occasion to have any contact with Mr. Coleman?

A Yes, sir.

Q Do you know what Mr. Coleman did with respect to Triumph and Jaguar's obtaining control of a listed company?

A Mr. Coleman, to the best of my knowledge, was assigned the job of working with the principals of Midwest Triumph and Mid-States Jaguar. The first meeting that I attended between those entities and principals of a company by the name of Gellman Manufacturing Company was through a request by John Coleman to be present.

Q So that there had been some prior dealings between the parties before you got involved?

A Yes, sir.

Q Incidentally, were the principals of Midwest Triumph and Mid-States Jaguar the same?

A Yes, sir.

A 0018

Q Those were separate corporations, but largely controlled by the same people?

A That's correct.

Q Just briefly, Mr. Burman, can you tell me approximately when and where those first negotiations took place?

A I assume they were in the winter or spring of 1962.

Q And were there a series of meetings and negotiations between the Triumph people, the Jaguar people, and Gellman Manufacturing Company?

A I understand there were, but I only attended that original meeting at that particular time.

Q Okay. Was it the desire of the Triumph and Jaguar people to acquire control over Gellman Manufacturing Company?

A Yes, sir.

Q And to that end was some kind of a written agreement subsequently worked out between the parties?

A We received, at a subsequent date, an agreement between the shareholders of Midwest Triumph and Mid-States Jaguar and Gellman Manufacturing Company for the purchase by those shareholders of a controlling

interest in Gellman.

Q And in response to the subpoena that was served upon you, Mr. Burman, did you bring a copy of that agreement?

A Yes, sir.

Q May I see it, please?

A The agreement itself is embodied as an exhibit to the proxy material of the Gellman meeting and is a matter of public record.

MR. BRENNAN: Miss Reporter, would you mark this as Burman Deposition Exhibit 1 as of this date?

(Whereupon said document was marked as Burman Deposition Exhibit Number 1, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked as Burman Deposition Exhibit 1 for identification as of this date which is the document that you just handed me. Can you generally describe that document for us, please?

THE WITNESS: A It is a printed document, the first page of which is a notice to the shareholders of Gellman Manufacturing Company of an annual meeting to be held on July 30, 1962. Thereafter, the material contains a proxy statement

which is thirty-four pages in length, attached to which is Exhibit A for a proposed amendment to the Articles of Incorporation of Gellman, and Exhibit B, being the agreement referred to between Midwest Triumph--the shareholders of Midwest Triumph and Mid-States Jaguar and Gellman Manufacturing Company.

Q And do I understand correctly that the shareholders of Midwest Triumph and Mid-States Jaguar were just a few people?

A They were two in number.

Q What were their names?

A Don Ross, D-O-N R-O-S-S, and Hal Oppen, H-A-L O-P-P-E-R.

Q And now the agreement that was entered into between Gellman Manufacturing and Mr. Ross and Mr. Oppen, that is attached as an exhibit to the proxy statement which is Burman Exhibit 1?

A Yes, sir.

Q Is that correct?

A That is correct.

Q Mr. Burman, did you have anything to do with either the negotiating or drafting of the agreement between Ross, Oppen, and Gellman

Manufacturing Company?

A No, sir.

Q Did you attend any meetings other than the one you have already described, which led up to the execution of this particular agreement?

A Not the agreement itself. Subsequent to the agreement being entered into, we were employed by counsel for Gellman Manufacturing Company as special S.E.C. counsel for the purpose of preparing the proxy material that is part of Exhibit 1, and for the purpose of filing a listing application with the American Stock Exchange.

Q And did you work on that particular project?

A Yes, sir.

Q So that you were involved in the preparation of Burman Deposition Exhibit 1?

A Yes, sir.

Q When you were involved in the preparation of the representation of Gellman in connection with the S.E.C. matter, Mr. Burman, did you have occasion to deal with Mr. Coleman and Divine & Fishman?

A Yes, sir, I did.

Q Was it with Mr. Coleman that you dealt?

A I dealt with Mr. Coleman and Mr. Fishman.

Q And as a result of your meeting with Mr. Coleman and Mr. Fishman, did you learn how they were to be compensated for the service they had rendered for Midwest Triumph and Mid-States Jaguar?

A Yes, sir.

Q And was their agreement for compensation reduced to writing?

A Yes, sir.

Q And do you have a copy of that agreement?

A Yes, sir, I do.

MR. BRENNAN: Would you mark this as Burman Exhibit 2?

(Whereupon said document was marked as Burman Deposition Exhibit Number 2, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked as Burman Deposition Exhibit 2 as of this date. Will you identify that document for us, please?

THE WITNESS: A That document is entitled "Option Agreement", between Gellman Manufacturing Company and Divipe & Fishman, made as of the 22nd day of August, 1962.

Q Were you involved in the negotiations leading up the execution of that particular agreement?

A I was involved in conversations regarding it, but I do not believe it was a negotiation. The parties arrived at the terms in advance, and it was simply a question of reducing those terms to writing.

Q But do I understand from your testimony then, Mr. Burman, that when you were first contacted with respect to the provisions of the Option Agreement, those terms and conditions had already been worked out between the parties?

A That's correct.

Q You were then called in to reduce that to writing?

A That's correct.

Q That agreement is dated August 22, 1962. Can you tell me, Mr. Burman, approximately when you were first contacted with the request that you prepare that Option Agreement?

A Can I refer to Exhibit Number 1?

Q Surely.

A The agreement between the shareholders of

Midwest Triumph and Mid-States Jaguar and the Gellman Manufacturing Company as indicated in Exhibit 1 was dated April 27, 1962. Since it embodies a reference to this compensation or Option Agreement, I presume it had to have occurred before then, but I don't recall the exact date.

Q. Well then, Mr. Burman, is it your testimony that parties to the Option Agreement, Burman Deposition Exhibit 2, had reached their agreement prior to April 27, 1962?

A. Yes, sir.

Q. Do you know when the Option Agreement was actually executed?

A. It was actually executed, I assume, on August 22, 1962, which must have been on or about the date of closing the transaction itself.

Q. And by the transaction, you are referring to the Gellman, Oppen, Ross transaction?

A. That's correct.

Q. Was the Option Agreement executed in Chicago?

A. Yes, sir.

Q. And you acted as a witness on behalf of or as Assistant Secretary on behalf of Divine & Fishman, Inc?

A That is correct.

Q During this period, Mr. Burman, from the time when you were retained as S.E.C. counsel for Gellman Manufacturing Company, and representing Divine & Fishman generally, were you present any time when there were discussions between John Coleman and any other officers or employee of Divine & Fishman about his compensation in connection with this transaction?

A Yes, I was.

Q Can you tell me when the first of those meetings that you attended took place?

A Subsequent to the closing of the transaction to which you have been referring between Oppen and Ross and Gellman Manufacturing Company and I believe early in 196³, there were conversations between Hal Divine, Seymour Fishman, Mr. Coleman and myself regarding Mr. Coleman's pay in this consideration; pay to Divine & Fishman for the transaction in question. Exactly when they occurred, whether late in '62 or early in '63, I am not sure.

Q In any event, you were not present when there were any discussions between Mr. Coleman

and Mr. Fishman or Mr. Divine with respect to any compensation or additional compensation that Mr. Coleman might receive prior to that time?

A No, sir.

Q Did you at some date, Mr. Burman, prepare a Nominee Agreement that was entered into between Divine & Fishman and Mr. Coleman?

A Yes, sir.

Q Do you have a copy of that agreement?

A Yes, sir.

MR. BRENNAN: Would you mark this as Burman Exhibit 3?

(Whereupon said document was marked as Burman Deposition Exhibit Number 3 as of 5-17-71, for identification.)

Q Mr. Burman, I show you what has been marked as Burman Deposition Exhibit 3. Will you identify that for the record?

THE WITNESS: A It is a Nominee Agreement dated July 31, 1962, between Divine & Fishman, Inc. and John Coleman.

Q If I understood your prior testimony correctly, Mr. Burman, you prepared that agreement?

A That's correct.

Q Can you tell me approximately when you prepared it?

A I believe it was early in 1963.

Q Were you present when the agreement was executed?

A No, sir.

Q Were you involved in any discussions or negotiations between Divine & Fishman and Mr. Coleman prior to the time you prepared the Nominee Agreement?

A No, sir. I prepared the agreement at the instructions of Mr. Divine and Mr. Fishman to incorporate what I was advised was the compensation arrangement between that firm and John Coleman regarding the particular transaction.

Q Okay. Then you never at any time discussed or negotiated the terms of this Nominee Agreement with Mr. Coleman?

A No, sir.

Q Prior to the time that Mr. Coleman executed the Nominee Agreement, did you send him a copy of it for his review and comment?

A I don't recall if I sent a copy to Mr. Coleman. I sent copies, however, to our clients,

which were Mr. Fishman and Mr. Divine of the brokerage firm, with the suggestion that they have it executed.

Q Was there ever any redrafting of the agreement after you sent it to Mr. Divine or Mr. Fishman?

A Not to my knowledge.

Q When did you say that this particular Nominee Agreement was prepared?

A I believe it was late in '62 or early in 1963.

Q And the agreement is dated the 31st day of July, 1962. At whose instructions was it so dated?

A I don't recall, but the dating of this particular agreement must have been erroneous, because the shareholders meeting of Gellman Manufacturing Company was held July 30, 1962, and normally would have been closed the following day. However, there must have been a delay in the closing of the transaction, as the Option received by Divine & Fishman, Inc. from Gellman Manufacturing is dated August 22nd, whereas this Nominee Agreement is dated July 31st, and I don't have any recollection as to why the dates are in that order.

Q Well, was it the intention of the parties

that the Nominee Agreement bear the same date as the Option Agreement?

A Yes, sir.

Q And when you say that, you are saying that as a man who acted as Divine & Fishman's attorney in preparation of both of these agreements?

A That is correct.

Q And am I correct, Mr. Burman, that it would have been common and typical in this kind of an arrangement for agreements such as the Option and the Nominee Agreement to be executed at the closing of this corporate transaction that was the subject matter of both of these agreements?

A That is correct.

Q Mr. Burman, the agreement of April 27, 1962 between Ross, Opper, and Gellman provided that Opper and Ross were going to exchange all of the outstanding shares of stock of Midwest Triumph Distributors, Inc., and Illinois corporation, and Mid-States Jaguar, Ltd., an Illinois corporation, with Gellman Manufacturing Company for 850,000 common shares of Gellman, is that correct?

A That's correct.

Q Can you tell me, sir, what the value of

the 850,000 common shares of Gellman was at that time?

A My guess is that the Gellman shares at or about the time of execution were selling somewhere between \$1.50 and \$2.50 a share; however, there would be a table in the Proxy Statement indicating that and also the ranges by quarters.

Q Can you describe that table and tell us about it, Mr. Burman?

A Yes. The price as indicated on page 15 of the Proxy Statement, being a part of Exhibit 1, indicates that the price range of Gellman common during the first quarter of 1962 was between a low of $1 \frac{7}{8}$ and a high of $2 \frac{3}{8}$.

Off the record.

(Discussion outside the record.)

Q Mr. Burman, at some time after the Nominee Agreement, Exhibit 3, was executed, was a copy of it sent to you by Divine & Fishman?

A Yes, sir.

Q And that is how you happen to have a copy of it in your files at the present time?

A That's correct.

Q Subsequent to receiving an executed copy

of the Nominee Agreement-- Strike that.

At some time subsequent to August 22, 1962, was Divine & Fishman involved in a transaction with either Golkin, Bomback & Co., Inc. or a gentleman by the name of Saul Golkin?

A Yes, sir.

Q Can you tell me when the negotiations between Divine & Fishman and the Golkin organization commenced?

A I believe it was sometime during the fall of 1962.

Q Were you involved in those negotiations at that time?

A Yes, sir.

Q What was the object involved in those negotiations?

A The results of the negotiations are a matter of public record. Messrs. Golkin, Bomback, and I believe Mr. Golkin's brother were partners in a New York stock exchange member firm and other principal firms, or principal exchanges, operating out of New York City. The purpose of the negotiations was for Messrs. Golkin, Bomback, and Mr. Golkin's brother to acquire interest in Divine &

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Fishman, Inc., and to discontinue the separate operation of their brokerage firm.

Q Are you saying discontinue the separate operation of the Golkin firm?

A That's correct.

Q What was then named the Golkin, Bomback firm?

A I believe Golkin, Bomback & Co., Inc.

Q And was that a corporation?

A Yes, sir.

Q Do you know in what state it was incorporated?

A No, sir.

Q Do I understand correctly, Mr. Burman, that Mr. Divine and Mr. Fishman were the substantial and the only stockholders of Divine & Fishman?

A No, sir. There were other Class A and Class B shareholders of Divine & Fishman.

Q But did Mr. Divine and Mr. Fishman have substantial control over the corporation?

A I don't recall the exact percentages, but they were the largest, the two largest shareholders.

Q Would it be fair to say that they largely ran the company?

A That's correct.

Q Now, under the terms of this agreement

between Golkin, Bomback & Co., Inc. and Divine & Fishman, did Mr. Divine and Mr. Fishman remain active in the company?

A Yes, they did.

Q And did those negotiations between Divine & Fishman and Golkin, Bomback result in a written agreement?

A Yes, sir.

Q Do you have a copy of that agreement?

A Yes, sir.

Q May I see it, please?

MR. BRENNAN: Mark this as Burman Exhibit 4.

(Whereupon said document was marked as Burman Deposition Exhibit Number 4, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked as Burman Exhibit 4, for identification which purports to be an agreement consisting of six pages, executed by Divine & Fishman, Inc. by H.S. Divine, President, and by Saul Golkin, Milton J. Bomback, and George John Golkin, and attached thereto is Schedule A, Schedule B, and Exhibits A through E, which appear on their face to be agreements between Divine & Fishman and

A 0034

certain other persons. Is this the agreement that was entered into by Divine & Fishman and Golkin, Bomback, and Golkin?

THE WITNESS: A Yes, sir.

Q What did Golkin, Bomback, and Golkin acquire under the terms of that agreement?

A They acquired a substantial number of the Class A voting shares of Divine & Fishman, Inc., and in effect, became principal shareholders along with Mr. Divine and Mr. Fishman. In addition, the agreement provides for the redemption or repurchase of shares held by certain other former shareholders of Divine & Fishman, Inc.

Q Would it be Divine & Fishman, Inc. that would repurchase or make the redemption?

A That's correct.

Q Were you involved in the negotiations leading up to the execution of that agreement?

A Yes, sir.

Q During those negotiations, was there ever any discussion concerning the Option Agreement between Divine & Fishman and Gellman Manufacturing Company?

A Yes, sir.

Q So that Golkin, Bomback and Golkin were familiar with this agreement prior to the execution of the agreement marked Exhibit 4?

A That's correct.

Q And during those negotiations, was there any discussion concerning the Nominee Agreement, Exhibit 3?

A I don't recall any specific discussion regarding it. However, Mr. Golkin and Mr. Bomback and their respective attorneys and accountants received all the financial statements of Divine & Fishman, Inc., and reviewed all its various contracts.

Q Including the Nominee Agreement?

A I assume so.

Q Well, Mr. Burman, as attorney for Divine & Fishman, did you make those various agreements available to Golkin's attorneys?

A Yes, sir.

Q And did you make the Nominee Agreement, Exhibit 3, available to them?

A I don't recall that specifically.

Q Who were Golkin's attorneys at that time?

A Mr. Golkin and Mr. Bomback were represented by a New York law firm of which a Mr. Saul Kleiman

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was counsel, was a partner.

Q Could you spell that?

A I can't recall, but I believe it is K-L-E-I-M-A-N.
I can supply you with the name of the law firm at a later date.

Q Now, you made reference of the fact that accountants were also involved. Did Golkin have its accountants examine books and records, and Divine & Fishman?

A Yes, sir.

Q And at that time did Divine & Fishman have outside public accountants audit their books periodically?

A Yes, sir.

Q Do you know who the accounting firm was?

A I believe it was Arthur Anderson & Company or Silver Millman & Company. I can't recall.

Q Were you generally familiar with the books and records of Divine & Fishman?

A Only with respect to the corporate structure of the brokerage firm and with respect to certain financial transactions, but not as to the day-to-day or year-end operations of the brokerage business itself.

A 0037

Q Do you know whether the final books and records of Divine & Fishman would have disclosed existence of the Nominee Agreement between Divine & Fishman and John Coleman?

A No, sir. I do not know.

Q You do not know whether they would or would not?

A No, sir.

Q Does the agreement between Divine & Fishman and Golkin, Bomback deal with, in any way, the Option Agreement entered into between Gellman and Divine & Fishman?

A Yes, sir.

Q What does it provide with respect to that Option Agreement?

A In connection with Exhibit A, to the agreement itself, which is an agreement covering the repurchase of a Mr. Robert Albert's interest in Divine & Fishman, there is a schedule attached which indicates options held in various entities by Divine & Fishman, and indicates on the schedule that such options are "before deducting those warrants and options held for employees not presently shareholders."

Q Is the intention of that schedule to disclose names of corporations with which Divine & Fishman

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held either options or warrants?

A That's correct.

Q And also where employees of Divine & Fishman who were not shareholders of Divine & Fishman may have an interest in those options or warrants?

A That's right.

Q Was Mr. Albert a shareholder of Divine & Fishman prior to the agreement with Golkin, Bomback?

A Yes, sir.

Q Subsequent to the agreement with Golkin, Bomback, did he remain a shareholder?

A No, sir. At the closing of this agreement, December 12th, '62, Mr. Albert's interests were purchased and his employment ceased.

Q Was it Golkin, Bomback who purchased his shares?

A No, sir. I believe that was a redemption by Divine & Fishman.

Q Was that true of other employees of Divine & Fishman at that time?

A I don't believe there were other employees, but it was true with respect to other shareholders, yes.

Q Do you know, Mr. Burman, why Golkin, Bomback

desired to obtain an interest in Divine & Fishman?

A The purpose was to combine the operations of the former Golkin, Bomback in New York and Divine & Fishman of Chicago into one larger brokerage firm.

Q Would that firm then have offices in Chicago and New York?

A Yes, sir.

Q Prior to the Golkin, Bomback agreement, did Divine & Fishman specialize in some particular type of brokerage activity?

A No, sir. They did both retail brokerage business and corporate finance underwritings or private issues.

Q Do you know whether the same thing was true of Golkin, Bomback prior to the agreement?

A I believe Golkin, Bomback & Co. prior to the agreement was principally involved in over-the-counter trading, and in retail sales, and to a much lesser extent, in corporate financing.

Q Mr. Burman, what do you mean by "retail sales"?

A Sales of listed and unlisted securities to the public.

Q Subsequent to the agreement between Divine &

Fishman and Golkin, Bomback, did you continue to represent Divine & Fishman?

A Yes, sir. Its name was changed, I believe, to Golkin, Divine & Fishman, Inc., and we continued for a year or so thereafter to represent them.

Q And it is your recollection that at that time that was a Delaware corporation?

A I believe so, but my recollection is really based upon--

Q Well, Mr. Burman, I am referring you to Burman Exhibit 4, "the firm of Divine & Fishman, a New York corporation".

A I stand corrected.

Q Is it your recollection, in the light of that, that they were a New York corporation?

A Yes.

Q Who kept the corporate minute books and other corporate records of Divine & Fishman while you represented them?

A Our firm did.

Q And you said that you continued to represent Divine & Fishman for approximately a year after the closing of this agreement of December 12, 1962?

A That is correct.

Q And during that time, did Divine and Fishman continue as the main officers here in Chicago?

A Yes, sir.

Q And they also operated the New York office, and both offices, I gather, were then operated under the name of Golkin, Divine & Fishman?

A That is correct.

Q When you ceased being counsel for Golkin, Divine & Fishman, to whom did you deliver the corporate records, minute books?

A To the best of my recollection, they were delivered to Mr. Saul Golkin.

Q During that time, between the acquisition of stock in Divine & Fishman by Saul Golkin and the time you stopped representing them, did Saul Golkin then become the dominant figure in that organization?

A Yes, sir.

Q By virtue of this agreement of December 12, 1962, Exhibit 4, did Golkin, Bomback and George John Golkin become major stockholders in Divine & Fishman?

A Yes, sir.

Q Did they acquire more stock than any other

single stockholder?

A That I don't know.

Q Do I understand Mr. Burman, then, that the Nominee Agreement between Divine & Fishman and John Coleman, Exhibit 3, was actually executed after Golkin, Bomback and Golkin acquired an interest in Divine & Fishman?

A I believe so.

Q Did you, at some time subsequent to the preparation of the Nominee Agreement between Coleman and Divine & Fishman, have anything to do with the exercise of the Option Agreement between Gellman Manufacturing Company and Divine & Fishman?

A Yes, sir.

Q First of all, when was your involvement in that, and what was it?

A As I testified, our firm was special counsel to the Gellman Manufacturing Company in 1962 for the sole purpose of preparing the proxy material, analyzing applications in connection with that transaction, in Exhibit 1.

Approximately sometime in 1965, we were again asked to be special counsel to Gellman Manufacturing Company, which was then known as

A-M-C-O, Amco Industries. In our capacity as special counsel for Amco, we received, in December of 1967, a letter from Mr. Saul Golkin as President of Golkin, Bomback & Co., Inc. advising that it was their intention to exercise the option which was for 50,000 shares of common stock of Amco at \$2 per share and that it was the holder of the option originally granted to Divine & Fishman, Inc.

Q Do you have a copy of that letter that you received from Saul Golkin?

A Yes, sir.

Q May I see it, please?

MR. BRENNAN: Would you mark this as Burman Exhibit 5?

(Whereupon said document was marked as Burman Deposition Exhibit Number 5, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked Deposition Exhibit 5. Is it the letter that you referred to as having received from Saul Golkin?

THE WITNESS: A Yes.

Q The letter is addressed to Amco Industries?

A That's correct.

Q Prior to that time, Gellman Manufacturing Company had changed its name to Amco Industries?

A That's correct.

Q So there was no question but that at that point in time Amco Industries was the same corporation as Gellman?

A Yes, sir.

Q The letter is from Golkin, Bomback & Co., Inc., and recites in the first paragraph, "formerly Divine & Fishman, Inc."?

A That's correct.

Q After receiving that letter, did you make an investigation to determine whether Golkin, Bomback, Inc. was the corporate successor to Divine & Fishman?

A Yes, sir.

Q What did that investigation consist of?

A We checked with the corporate office in New York regarding the identity of the firm of Divine & Fishman, Inc., and to my recollection, that firm's name was changed to Golkin, Divine & Fishman, Inc., and then subsequently to Golkin, Bomback & Co., Inc.

Q You say you checked with the corporate office?

A Of the State of New York, Secretary of State.

A 0045

Q The letter, Mr. Burman, is just dated December, and it is blank, 1967. Do you know approximately when you received it?

A It was sent to the company with a copy to our office in exactly that fashion. I believe it was early in December.

Q The letter recites that "In accordance with the terms of the Option Agreement, our certified check in the sum of \$100,000 is enclosed for the purchase of the said 50,000 shares of common stock, \$1 par value, of Amco Industries, as of this date." Was a certified check in fact received with the original of this letter by Amco?

A We were so advised by our client.

Q Mr. Burman, I direct your attention specifically to the first line of the letter and also to the line right after "Very truly yours" at the bottom. There appear to be some handwritten changes in the typed name. Did you make those changes, or were those changes made in the original letter when it was received?

A To the best of my knowledge, this is an exact copy of the letter received by the client and transmitted to us, as well as a copy of the letter

we received directly with the handwritten changes apparently made by the sender.

Q After receiving this letter, what did you do in connection with the exercise of the option?

A As counsel for Amco, we advised Mr. Golkin that the shares in accordance with the terms of the option would be issued, but that they would bear a restricted legend against resale in any manner that would violate the Security Act of 1933, and in accordance with that, we issued an opinion as counsel for Amco to the transfer agent, authorizing the issuance of the shares in question.

Q Do you have copies of those letters?

A It is a letter dated December 22, 1967, yes.

MR. BRENNAN: Would you mark this Exhibit 6?

(Whereupon said document was marked
as Burman Deposition Exhibit Number
6, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked Burman Deposition Exhibit 6. Is this a true and correct copy of the letter of December 22, 1967 that you previously identified?

THE WITNESS: A Yes, sir.

Q This letter authorizes and directs LaSalle

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National Bank Stock Transfer Department to issue a certificate representing 50,000 common shares of Amco Industries to Golkin, Bomback & Co., Inc., with instructions that the certificate contains the following legend: Off the record.

(Discussion outside the record.)

Maybe, Mr. Burman, I will ask you to read that copy. I'd rather we read that into the record.

A "The holder of this certificate has represented and warranted to Amco Industries, Inc. that it has acquired the shares represented by this certificate for his own account, for investment and not for disposition, in a manner which could constitute a distribution within the meaning of the Securities Act of 1933, as amended, and the rules and regulations issued by the Securities and Exchange Commission pursuant thereto. No transfer or other distribution can be made of the shares represented by this certificate (1) unless such shares have been registered under the Securities Act of 1933 and amended, or (2) such registration under the Securities Act of 1933 is not required in the opinion of counsel for Amco

Industries."

Q Do you know, Mr. Burman, whether the transfer agent issued a stock certificate bearing that restriction about that time to Golkin, Bomback & Co., Inc?

A I don't know, as a matter of fact, but I am sure that such a certificate, in ordinary course, would have been issued.

Q In any event, the bank didn't raise any objection to the author of this letter to issuing this kind of a certificate?

A No, they did not.

Q At the time Golkin, Bomback exercised its option in December of 1967, did you make any inquiry as to what interest John Coleman had in the stock being acquired by Golkin, Bomback & Co., Inc?

A No, sir.

Q Did you have any contact with John Coleman at all at that time?

A I don't believe so, no, sir.

Q Do you know whether anyone at Golkin, Bomback & Co. notified Mr. Coleman of the exercise of the option?

A I have no knowledge of it.

Q Did you speak or confer with anybody at Golkin, Bomback about their giving notice to John Coleman of the exercise of this option?

A No, sir.

Q At sometime subsequent to December of 1967, do you know whether or not Golkin, Bomback & Co. endeavored to transfer the stock certificate for the 50,000 shares of common stock of Amco that was delivered to them at that time?

A Yes, sir.

Q When was your first knowledge of that attempt to transfer the stock?

A We received various telephone calls in November or December of 1970 from Mr. Golkin asking if we would free up the certificate held by him for 50,000 shares of Amco Industries, Inc., or if the company itself contemplated filing any registration statements at that time.

Q Do I understand, Mr. Burman, that when he called and asked you to "free up" the stock, he wanted to sell the stock, and the restriction on the stock prohibited him from doing that?

A That's correct. He wanted the legend removed

preventing its transferability.

Q Did he subsequently make some kind of a request in writing to that effect?

A We had advised Mr. Golkin that we were not in a position to execute such an opinion, and subsequently through his counsel, a request was made by Mr. Golkin on behalf of Golkin, Bomback & Co. to the Securities and Exchange Commission in Washington to obtain a no-action letter. We received-- I want to correct that. The Amco Industries received a communication in February from counsel to Golkin, Bomback & Co., Inc. advising and containing a copy of a no-action letter issued by the S.E.C. in Washington.

Q Was there certain correspondence between your office and Golkin, Bomback & Co. and Amco at this time with respect to Golkin's inquiry about removing the restriction?

A The only correspondence, to my knowledge, was between Mr. Golkin and/or his attorneys and Amco Industries, Inc.

Q Do you have copies of that correspondence?

A Yes, sir.

Q May I see it, please? Off the record.

(Discussion outside the record.)

A 0051

MR. BRENNAN: Would you mark these as Exhibits 7, 8, and 9?

(Whereupon said documents were marked as Burman Deposition Exhibits Number 7, 8, and 9, for identification, as of 5-17-71.)

Q Okay, Mr. Burman. I show you what has been marked as Exhibit 7, for identification. Will you identify that, please?

THE WITNESS: A That is a letter addressed to the Division of Corporate Finance, Securities and Exchange Commission, Washington, D.C., sent by Mr. John J. Sullivan, attorney with the firm of Manes, Sturim, Roth & Fisher. As indicated in the letter, it is being forwarded as attorneys for Saul Golkin and "other partners of the former brokerage firm Golkin, Bomback, Inc."

Q Where did you receive that copy of that letter, Mr. Burman?

A This copy was forwarded to us as an enclosure with Mr. Sullivan's letter to our client Amco Industries, Inc. I am not sure if it is Mr. Sullivan's or not.

Q I show you what has been marked as Exhibit 8

for identification. Can you identify that?

A Exhibit 8 is a letter from a Mr. Murray Roth, a partner in the firm of which Mr. Sullivan is apparently associated, dated February 11, 1971, to our client Amco Industries, Inc., in which he encloses a copy of a no-action letter issued by the Securities and Exchange Commission.

Q Okay. And I show you what has been marked Exhibit 9.

A Exhibit 9 is a letter from a Mr. John Heneghan, Assistant Chief Counsel, Securities and Exchange Commission, Washington, D.C., dated February 9, 1971, addressed to Mr. Sullivan.

Q Mr. Burman, was it Exhibit 9 that was incorporated with Exhibit 8? In other words, it was sent to your client with Exhibit 8?

A That's correct.

Q Now, what about Exhibit 7?

A Exhibit 7 we had requested by telephone from Mr. Sullivan in order to have a copy of the opinion and the information he had forwarded to the Securities and Exchange Commission of Washington upon which or as a result of which they issued their no-action letter. I believe that was sent to us by

Mr. Golkin, rather than his counsel.

Q And was that sent to you sometime in February of 1971?

A That's correct.

Q Mr. Burman, at any time between December of 1967 and February of 1971, did you have any contact at all with Golkin, Bomback & Co?

A The only contact I had was telephone conversations from Mr. Saul Golkin at the end of the year 1970, relating, as I indicated before, to freeing up his shares or in some way removing the legend on his certificate for 50,000 shares.

Q At any time during these telephone conversations with Mr. Golkin, did you discuss Mr. Coleman's Nominee Agreement with Divine & Fishman?

A No, sir. I did not.

Q Subsequent to the receipt of the S.E.C.'s no-action letter dated February 9, 1969, Exhibit 9, what action did you take with reference to the stock?

A When we obtained a copy of Mr. Sullivan's letter to the S.E.C. requesting that no-action letter, we then issued on February 16th an opinion from our firm to the transfer agent permitting the re-issuance of a certificate to Golkin, Bomback &

Co., Inc. without any legend thereon.

Q Do you have a copy of that letter?

A Yes, I do.

MR. BRENNAN: Would you mark this as Exhibit 10?

(Whereupon said document was marked
as Burman Deposition Exhibit Number
10, for identification, as of 5-17-71.)

Q Mr. Burman, I show you what has been marked
as Exhibit 10, for identification. Is this the
opinion letter that you rendered to the LaSalle
National Bank Corporate Trust Department in
connection with the removing of the restriction?

THE WITNESS: A It is the opinion our firm issued,
yes, sir.

Q Subsequent to February 16, 1971, did you
have any contact or any knowledge with respect
to the transfer of the 50,000 shares of common
stock of Amco?

A On February 16th or the next day, I'm not
sure which. Mr. Golkin came to my office for the
purpose of delivering that signed opinion together
with the certificate to the LaSalle Bank in
Chicago that day in order to obtain new certificates
for 50,000 shares. Subsequent to that, whether

in fact Golkin, Bomback & Co., Inc. transferred or didn't transfer shares, I have no knowledge.

Q Did you see Mr. Golkin in Chicago on February 16th when he came to pick up the letter?

A Yes, sir.

Q At that time did you have any discussions with him about Mr. Coleman's Nominee Agreement?

A No, sir.

Q At any time between December, 1967 and the present time, did you represent Golkin, Bomback & Co?

A Would you please repeat the other date?

Q December, 1967.

A No, sir.

Q Since seeing Mr. Golkin in February of 1971, have you had any other contact with either him or anyone else in any way associated with Golkin, Bomback & Co., Inc?

A Yes, sir.

Q Who have you talked to since then?

A About, I believe, a month ago, I called-- had the occasion to call Mr. Golkin.

Q What was the occasion that prompted you to call him?

A 0056

A I met John Coleman socially, and Mr. Coleman brought up the issue of the option he had to purchase certain of the option shares of Amco Industries, and asked me what did occur. I advised him that Golkin, Bomback had exercised their option before its termination date, and that Golkin, Bomback had in effect obtained a no-action letter from the Securities and Exchange Commission. He, Mr. Coleman, brought up the issue of his option, and as a result, I called Mr. Saul Golkin on the telephone.

Q Now, that conversation with Mr. Coleman took place approximately when, Mr. Burman?

A I can't recall, but I believe it was three or four weeks ago.

Q Three or four weeks ago?

A From today's date.

Q Was that the first time that you had discussed the matter with Mr. Coleman between the time the Nominee Agreement was executed and this meeting that you described that you had three or four weeks ago?

A Yes, sir.

Q Do you know of anyone who had discussed the

Nominee Agreement or the exercise of the option with Mr. Coleman during that intervening period?

A No, sir. I would like to correct something. My conversation with Mr. Coleman and Mr. Golkin might have been as much as two months ago. I'm not positive of the exact date.

Q After your conversation with Mr. Coleman, you say you called Mr. Golkin?

A That's correct.

Q Called him at his office in New York?

A Yes, sir.

Q What was said during that conversation?

A I advised Mr. Golkin that John Coleman had mentioned the option to me and thought I should bring it to his attention. He advised me that Mr. Coleman had been given the opportunity, through a Mr. Robert Albert of Chicago, to exercise his portion of the option in December of 1967 and had failed to do so. That was the sum and substance of the conversation.

Q Was Mr. Albert the same Mr. Albert who was a party to the agreement of December, 1962, Exhibit 4?

A Yes, sir.

Q And if I understood your earlier testimony

A 0058

correctly, Mr. Albert terminated his relationship with Divine & Fishman in about December, 1962?

A That's correct.

Q To your knowledge, did he ever become associated with either Divine & Fishman or any of its successors, Golkin, Bomback subsequent to that time?

A No, sir.

Q When you called Mr. Golkin and told him about your conversation with Mr. Coleman, he was familiar, I take it, with the existence of the Nominee Agreement?

A Yes, sir.

Q Did he indicate whether or not Mr. Albert had notified Mr. Coleman in writing or orally?

A No, he did not indicate.

Q Didn't specify either way?

A Didn't specify either way, no, sir.

Q Was there anything else said by Mr. Golkin during that conversation?

A No.

Q Did you advise Mr. Coleman of the results of that conversation?

A Yes, sir.

Q Since that time have you had any further

conversations with Mr. Golkin?

A No, sir.

Q Have you ever represented Mr. Coleman?

A No, sir.

Q No one in your firm has, to your knowledge, I take it?

A We may have from time to time, prior to 1966, represented firms in which Mr. Coleman might have had an interest, but to the best of my knowledge, never represented him personally.

Q Do you know anything about the corporate history or existence of Divine & Fishman from the year after December 12, 1962, when you ceased representing them?

A No. I have no knowledge as to the corporate entity itself.

Q You don't know whether it is still in existence?

A No, sir.

Q Do you know whether or not the corporate entity transferred its assets or business operations to a different company?

A I believe, though I was not a party to the transaction or counsel for any of the parties, that the business of Golkin, Bomback & Co., formerly

A 0060

Divine & Fishman, Inc., was taken over by a corporation by the name of First Hanover Corporation.

Q Who told you that?

A I was advised of that by some of the salesmen who continued at First Hanover Corporation who prior to that date were employed at Divine & Fishman.

Q Were they salesmen who worked in Chicago?

A Yes, sir.

Q And approximately when did that occur?

A I believe it was in either 1963, late in the year, or 1964.

Q Do you know whether or not Mr. Golkin had any control over this First Hanover Corporation?

A I believe he did.

Q That is what was told you by the salesmen?

A My knowledge is either based on something told to me by one of the salesmen or by having received financial statements in the mail.

Q Can you give us the names of the salesmen who were salesmen for Divine & Fishman and subsequently Golkin, Bomback, and then subsequently First Hanover Corporation here in Chicago?

A The only one I can specifically recall is a Mr. Epstein, whose first name I'd have to supply

you with.

Q Is he still residing here in Chicago?

A I believe so.

Q Do you know who he is employed by at the present time?

A No, sir. His name was, I believe, Alvin Epstein, and I believe he was a Sales Manager for First Hanover Corporation.

Q The subpoena that was served on you, Mr. Burman, instructed you to produce certain documents, and we have already identified certain documents. I wonder if you would produce at this time all of the other documents in your possession called for in the subpoena.

Off the record.

(Discussion outside the record.)

MR. BRENNAN: Let the record show that we have had an off-the-record discussion with respect to other documents that Mr. Burman has produced this afternoon, and there is some question in his mind as to whether or not the people that he has written to have received these documents. If they are parties to this case or when they became parties to this case might not be intended to claim an

attorney-client privilege as to those documents.

Q Just generally describe them, Mr. Burman.

THE WITNESS: A Pursuant to the subpoena, we have reviewed our files during the period of 1962 and 3 in which the Option or Nominee Agreements to John Coleman are involved. There is correspondence in interoffice memorandums between ourselves as counsel and Golkin, Divine & Fishman, Inc. relating to Mr. Coleman. I have those in my possession.

Q Mr. Burman, the documents that you have described, are they documents that were exchanged between your office and Divine & Fishman prior to the execution of the Nominee Agreement?

A Prior to and subsequent thereafter.

Q Okay. As to those documents that were exchanged subsequent to the execution of the Nominee Agreement, do they generally relate to the exercise of the option and Mr. Coleman's rights under the Nominee Agreement in the event of an exercise?

A Yes, they do.

Q And Mr. Burman, are you agreeable to holding those documents in your possession and keeping them until we get this question of privilege resolved

A 0063

between yourself and Mr. Golkin?

A Yes, sir.

MR. BRENNAN: Off the record.

(Discussion outside the record.)

THE WITNESS: With respect to the prior question regarding counsel for Mr. Saul Golkin, Mr. Milton Bomback, and Mr. George Golkin in connection with the December, 1962 agreement, their counsel was a Seymour Kleinman, K-L-E-I-N-M-A-N, of the firm of Golenbock & Barell, G-O-L-E-N-B-O-C-K and B-A-R-E-L-L, 60 East 42nd Street, New York, New York.

MR. BRENNAN: Okay. I have no further questions, Mr. Burman.

MR. HIRSHMAN: I don't think I am in a position to cross examine.

MR. BRENNAN: Okay. You are entitled to read this, and I think we should have the deposition written up and you should read it, and we generally agreed among ourselves insofar as the other documents which were not produced at this time are concerned, your deposition is being continued, generally until such time as we resolve that problem.

THE WITNESS: That is right.

oOo

(Witness excused.)

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STATE OF ILLINOIS)
COUNTY OF C O O K) SS.

I wish to make the following changes, for the following reasons:

PAGE LINE

15

16

CHANGE: 1965 to 1963

REASON: _____

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REASON: _____

(Signed) _____

A 0065

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I have read the foregoing transcript
of my deposition, consisting of pages 1 to 53,
inclusive, and the foregoing is a true, correct
and complete transcript of my testimony so given
at the time and place aforesaid, and I again
subscribe and make oath to the same.

Marion Z. Berman

SUBSCRIBED AND SWORN TO
before me this ~~30~~³⁰ day of
June , A.D., 1971.

John J. Fisher
Notary Public

A 0066

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, BARBARA J. SMALL, a notary public in and for the County of Cook and State of Illinois, do hereby certify that heretofore, to-wit, on the 17th day of May, A.D., 1971, personally appeared before me at Suite 5000, One First National Plaza, in the City of Chicago, County of Cook and State of Illinois, MARSHALL L. BURMAN, a witness called by the plaintiff, in a certain cause now pending and undetermined in the United States District Court for the Northern District of Illinois, Eastern Division, wherein John Coleman is plaintiff and Golkin, Bomback & Co., Inc. and Saul Golkin are defendants.

I further certify that the said witness, MARSHALL L. BURMAN, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to writing in the presence of said witness, by means of shorthand, and afterwards transcribed upon a typewriter, and the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

A 0067

I further certify that after said testimony had been so transcribed it was submitted to the witness for examination and read over by the said witness and signed by him.

I further certify that the taking of this deposition was pursuant to order of court, and that there were present at the taking of this deposition Richard J. Brennan, Esq. and John Malugen, Esq., of the firm of Winston, Strawn, Smith & Patterson, One First National Plaza, Chicago, Illinois on behalf of the plaintiff, and Harold C. Hirshman, Esq., of the firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal, 69 West Washington Street, Chicago, Illinois.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 28th day of July, A.D., 1975.

Barbara J. Snell
Notary Public, Cook County, Illinois.

My commission expires

Sept. 28, 1978

A 0068

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN COLEMAN,

Plaintiff,

vs.

No. 71 C 1037

GOLKIN, BOMBACK & CO., INC.,
a Corporation, GOLKIN, BOMBACK
& CO., a partnership, and
SAUL GOLKIN, a partner,
Defendants.

The deposition of ROBERT M. ALBERT,
called by the plaintiff for examination, pursuant
to order of court, and pursuant to the Rules of
Civil Procedure for the District Courts of the
United States, taken before Barbara J. Small, a
notary public within and for the County of Cook
and State of Illinois, at Suite 5000, One First
National Plaza, Chicago, Illinois, on the 17th
day of May, A.D., 1971, at 3:30 o'clock P.M.

APPEARANCES:

RICHARD J. BRENNAN, Esq. and JOHN MALUGEN,
Esq., of the firm of
Winston, Strawn, Smith & Patterson,
appeared on behalf of the plaintiff,

Reported for
LA SALLE REPORTING SERVICE, by
Barbara J. Small.

HAROLD C. HIRSHMAN, Esq., of the firm of
Sonnenschein, Levinson, Carlin, Nath
& Rosenthal,

MORTON C. CHESLER, Esq., of the firm of
Perlman, Hecht & Chesler,

appeared on behalf of Robert M. Albert.

MR. BRENNAN: Let the record show that this is
the deposition of M. Robert M. Albert being
taken at this time and place pursuant to a subpoena
served on Mr. Albert and pursuant to an order
entered by Judge Hoffman in this case.

Would you swear the witness in?

ROBERT M. ALBERT,

called as a witness by the plaintiff, having been
first duly sworn, was examined and testified as
follows:

E X A M I N A T I O N

By Mr. Brennan:

Q Would you state your full name?

A Robert M. Albert.

MR. HIRSHMAN: Before this deposition proceeds,
I have a statement for the record. My name is
Harold Hirshman, and I am an associate of the
Sonnenschein firm, and I was contacted by New York

counsel, and he requested that we come today, although this is not to constitute an appearance for any of the defendants in this action, and we are here merely for informational purposes, and our activities are not to be construed as an appearance for any of the defendants.

MR. BRENNAN: State who contacted you.

MR. HIRSHMAN: Mr. David Fisher.

MR. BRENNAN: Q Mr. Albert, would you give us your home address?

THE WITNESS: A 1086 Elm Ridge Drive, in Glencoe.

Q And what is your business or occupation?

A Stockbroker.

Q And with whom are you associated?

A Paine, Webber, Jackson & Curtis.

Q How long have you been associated with Paine, Webber?

A Nine years.

Q What are your functions and duties there?

A Stockbroker.

Q Do you specialize in any particular line of the securities business?

A No.

A 0071

Q You do everything?

A Yes, whatever we can do honestly to make a dollar.

Q Are you a member of any professional organizations or societies?

A Chicago Bond Club.

Q Anything else?

A Past President of the Chicago Stockbrokers Association.

Q Anything else?

A No.

Q Are you licensed by any Government agency or body?

A All of them, by the State of Illinois, I think the State of Wisconsin.

Q Mr. Albert, you say you have been with Paine, Webber for twelve years?

A No I did not say. I said something in the area of nine years.

Q Prior to your being associated with Paine, Webber, with whom were you associated?

A I was with the firm of Divine & Fishman.

Q And you worked there as a stockbroker?

A No, I did not. I was the partner, I guess.

It was a corporation and I was an officer of the company.

Q What were your functions and duties at Divine & Fishman?

A The management of the retail brokerage business; the retail end of the business.

Q And that would be the sales of stock and securities to individuals, institutions, that sort of thing?

A Yes.

Q How long were you with Divine & Fishman?

A I think-- It's hard to remember specifically, but I think it was November of '61 until the end of '62; approximately fourteen months.

Q Now, do I understand, Mr. Albert, that you were a stockbroker in the corporation of Divine & Fishman?

A I was.

Q Were you an officer of that corporation?

A I was.

Q What office did you hold?

A Senior Vice-President.

Q Were you a member of the Board of Directors?

A I don't remember. I really-- I don't know.

Q Did you become a stockholder in November of 1961 when you first became affiliated with them?

A Yes, I did.

Q And at that time you made an investment in the company?

A I did.

Q Do you recall just approximately the amount of the investment you made in Divine & Fishman?

A Something in the area of ten thousand dollars, I think. It might have been fifteen thousand. I just don't remember all those facts right.

Q During that period, November, 1961, until the end of 1962, did you supervise the activities of other stockbrokers who were employed by Divine?

A No. I supervised activities of the managers of the various offices.

Q Where were the other offices?

A One in New York, and there were three in Chicago.

Q Where were the three in Chicago?

A One was in the Sheraton Hotel; one was up on North Michigan, right near that Weathered building, it was just south of there and I don't recall what address that was; and one at the

major office at 134 South LaSalle.

Q That is where your offices were?

A Yes.

Q And who did you report to at Divine & Fishman during this period?

A I reported to the President, who was Divine, Harold Divine.

Q Did you receive a guaranteed annual salary while you were employed by them?

A Yes.

Q And in addition to that, did you receive any other form of compensation other than dividends that might have been paid on the stock which you owned in the company?

A I don't follow exactly.

MR. CHESLER: Mr. Brennan, I want you to have freedom in asking questions, but what difference does it make what his salary was, in your case?

MR. BRENNAN: Well, I think it may have some significance. I appreciate your concern about it, but I can see areas where it may be of some significance.

MR. CHESLER: Be free to get whatever facts you need.

THE WITNESS: A If you explain your question.
I don't follow.

MR. BRENNAN: Q You received a guaranteed annual salary?

A That is exactly right.

Q Now, in the event that dividends were declared by the corporation, during the period that you were there, you'd receive a dividend on the stock in the corporation that you owned, is that correct?

A That is exactly right.

Q Did you receive any such dividends during the time that you were associated with Divine & Fishman?

A No.

Q No dividends at all?

A No.

Q Did you receive any other form of compensation other than in the way of bonuses, options, or any equity interest in any transaction that Divine & Fishman was involved in?

A Yes, as a-- Now, let me understand your question. In other words, you are referring to the fact that if the corporation was an underwriter and part of that agreement was the option to purchase some warrant or rights, was I a beneficiary of

A 0076

those rights? Yes, I was, to the tune of my percentage, which I recall was ten percent of the corporation.

That is yes.

Q This is all I wanted to get at.

A I thought you meant did I have some kind of bonus arrangement out of my salary.

Q So that the record is clear, Mr. Albert, in the event of anybody else who is reading this deposition might not understand it, would you describe in a little more detail what this ten percent arrangement was and when you would receive it and under what circumstances?

MR. CHESLER: I believe what Mr. Brennan wants to know is did you have ten percent of the stock of Divine & Fishman?

THE WITNESS: Yes, I did. I had ten percent.

MR. CHESLER: You did. Were you entitled to receive ten percent of any dividends that were declared on the stock?

THE WITNESS: Yes.

MR. CHESLER: Were you entitled to receive ten percent of any warrant or options or other benefits that Divine & Fishman were to receive or realize out of a particular deal?

THE WITNESS: Yes, yes I was. I was entitled to receive ten percent.

MR. BRENNAN: Q What I want you to describe in a little more detail is, on those particular deals where you would get ten percent of it, would you have to be actively involved in that particular transaction before you would get ten percent of it, or would you get ten percent on every transaction that Divine & Fishman was involved in?

THE WITNESS: A I'd get ten percent of every transaction that Divine & Fishman was involved in during the period of my contract, yes.

Q Were you at all familiar with a transaction between Gellman Manufacturing Company and certain individuals by the name of Hal Oppen and Don Ross?

A I recall that during the period of time that-- Now, Fishman, a man by the name of Seymour Fishman who was the Fishman of Divine & Fishman, was in charge of the underwriting of corporate finance activities for the firm. But as I recall, when the thing was about to come to fruition, he did bring them to my office, the principals of-- Gellman, as I recall, was a company on the American Stock Exchange, and these fellows had a company

which was being backed in, and at the time of signing-- I don't remember the specific facts, but I recall them being in my office at one time, yes.

Q All right.

MR. CHESLER: Well, when Mr. Brennan asks these questions, he doesn't want you to guess or surmise. If you know, you tell him. If you don't know, of course you can't tell him, and it may be more confusing if you try to get--

THE WITNESS: A It just seems to me that as a courtesy they brought them down, because this is a deal we were doing, and they introduced them to me. I am sure of that.

MR. BRENNAN: Q From what you said, Mr. Albert, is it a fact that you didn't have anything to do with the negotiating of that particular deal?

A No. I did not negotiate that deal.

Q Did you play any active role as a participant on behalf of Divine & Fishman in, so to speak, putting that deal together?

A Not to my knowledge.

Q Do you know how Divine & Fishman was to be compensated for the services it performed in connection with that particular deal?

A I do not know.

Q Mr. Albert, I show you what has been previously marked this day as Burman Deposition Exhibit 2, for identification, and ask you whether or not you have ever seen that document? Just examine the entire document and tell me if you have ever seen it before.

MR. CHESLER: That is, if you know.

THE WITNESS: A I would have to say this to you: I would have to say that if my files at Divine & Fishman were available-- You see, when I left the firm, I am sure that if there was a copy, and there probably was a copy sent to me as an officer, it would be in my files there. I don't recall seeing this and having seen it except that you were nice enough to mail me a copy when you sent me-- Did you send me a letter? Or no; it was attached to the-- Wasn't it attached to the--

MR. BRENNAN: Q Subpoena?

A Subpoena.

Q Well, it shouldn't have been, Mr. Albert. I don't know whether it was or not.

All right. The answer to the question is, you don't recall specifically seeing that document.

A No.

Q The next question, Mr. Albert, is do you know how Divine & Fishman was paid for their services in that particular transaction?

A I did. As I recall, there was a-- If you have a copy of the prospectus I can tell.

MR. CHESLER: The prospectus will speak for itself. He is asking if you recall.

THE WITNESS: A I do not.

MR. BRENNAN: Q I show you Burman Deposition 1, for identification, of this date. Is this the prospectus that you speak of? Would that be of assistance to you in refreshing your recollection?

A I am sure I saw this but--

Q Mr. Albert, I realize it's been some time since you were involved in this transaction, and I am not attempting to get you to testify to anything that you specifically don't recall.

A You understand that I was a busy man with my end of a very busy business.

Q And your end of the business really didn't have much to do with these kinds of deals, did it?

A No. That is true.

Q And that would have been true not only with the Gellman deal, but with any other corporate

finance deal that Divine & Fishman was working on?

A That is true.

Q Would it be fair to say you didn't really have anything to do with those deals at all, from the point of view of an active participant in the negotiations of those kind of deals?

A Yes, from the point of view, yes. That is true.

Q Yes, you had nothing to do with it?

A Yes. I had nothing to do with it.

Q Now, do you know whether instead of being paid a cash fee for the services that Divine & Fishman rendered in connection with that deal, whether they received an option or some equity interest to be exercised at some future date?

A I don't remember, but if my memory is correct, it was some of both. Wasn't there a fee, plus?

Q You don't remember?

A I don't remember.

Q And you weren't involved in negotiating those terms, I take it?

A I was not.

Q In connection with that particular deal, is there an employee of Divine & Fishman by the

A 0082

name of John Coleman you were familiar with?

A I was.

Q Do you know when he first became affiliated with Divine & Fishman?

A No.

Q Did you have anything to do with hiring him?

A No, but I am sure that they brought him to my office and I interviewed him. I am sure that they extended that courtesy, as I recall.

Q As a shareholder and Senior Vice-President, any new man would be brought to you?

A In that position, yes.

Q Do you remember what position he was brought in as?

A Yes, as I recall, in the Corporate Finance Department to assist Seymour Fishman in certain deals.

Q Did he come in as an experienced man who was going to bring his experience to it, or was he a young man who had no experience who was going to be trained?

A If my memory is correct, and I am depending completely on my memory, he had been with one or two other securities firms, and so would be experienced.

Q Did you have anything to do with determining his compensation?

A I don't remember. I doubt it, but I am sure that I was consulted as to the level. Yes, I am sure that I was consulted as to the level.

Q Did he report to you or work under you?

A No, no way, but he was a very affable young man, and I think that he liked me, and I liked him, and I am sure that he consulted, you know. I am sure because he was-- He and his wife frequently came to our home, but I have no--

Q But in terms of your direct business relationship, he wasn't a subordinate of yours?

A Not at all, and I maintained that protocol strictly.

MR. CHESLER: Off the record.

(Discussion outside the record.)

MR. BRENNAN: Q Mr. Albert, do you recall the circumstances in December of 1962 when you severed your relationship with Divine & Fishman?

THE WITNESS: A Generally, yes.

Q Can you tell me just briefly what happened that caused you to sever your relationship with them?

A Well, I think that it is fair to say that we

A 0084

came to a meeting of the minds; that I and they would no longer be associated.

Q Was that part of a larger re-organization or restructuring of Divine & Fishman's operations?

A No, I don't believe so.

Q Did it in any way involve the affiliation of a Mr. Saul Golkin and Milton Bomback and George John Golkin with the Divine & Fishman firm?

A Not to my knowledge. I don't believe that my attorneys nor I ever met them or knew of them. Our dealings were with Divine & Fishman.

Q Mr. Albert, I show you a document that has previously been marked as Burman Deposition Exhibit 4, for identification, and directing your specific attention to an Exhibit A to that particular document which purports to be an agreement between Robert M. Albert and Divine & Fishman, Inc., it is an unsigned agreement, and I'd like you to examine it and tell me whether or not you have ever seen the original of that particular document.

A Yes. This is a copy of the contract.

Q Is that an agreement that you entered into with Divine & Fishman sometime in December of 1962?

A If my memory is correct, yes.

MR. CHESLER: Just a second. You are looking at a copy.

THE WITNESS: December, '62, right.

MR. CHESLER: Well, wouldn't you want to-- Can you state that that is the agreement without looking at the original that bears your signature? Do you remember every page?

THE WITNESS: I do not remember every page. I cannot say that this is the agreement that I signed.

MR. BRENNAN: Q Do you have an executed copy of that agreement that you signed with Divine & Fishman?

THE WITNESS: A No, I don't, but it may be in my attorney's files.

Q Well, did you sign an agreement similar to that one with Divine & Fishman?

A Yes.

Q And you, somewhere in your files and papers, have a copy of it?

A I don't recall that I have a copy.

Q Well, does your attorney have a copy?

A I don't know. I'd have to determine that.

MR. CHESLER: May I say at this point, as I told Mr. Brennan, the partner who was in charge of the

matter originally on behalf of Mr. Albert retired last September from the firm, and then subsequently, my partner now, Bernard T. Hecht, who has been more recently in consultation with Mr. Albert with reference to this matter, is in Europe, and I therefore cannot help clarify this, but I am sure that if our original documents are available and with the permission of Mr. Albert, they can be made available.

MR. BRENNAN: Q Do you recall, Mr. Albert, without even referring to this copy of this agreement, whether under the terms of the final agreement you entered into with Divine & Fishman, were you to receive certain payments and other compensation from Divine & Fishman subsequent to the date you severed your relationship with them?

THE WITNESS: A That was part of the consideration, yes.

Q Did the agreement provide that in the event certain warrants and options held by the company could be exercised, that you would receive a ten-percent percentage of those warrants and options?

A Yes, it did.

Q And did those warrants and options relate to

specific transactions or deals that Divine & Fishman was involved in while you were associated with them?

A I am not sure that this is an accurate statement. There may have been warrants that were in the possession of Divine & Fishman at the time that I was associated with them. Whether or not they were all negotiated during that period of time, I can't say.

Q But they were transactions that had come to a conclusion either before or during the time you were employed by Divine & Fishman?

A Yes.

Q And included in those particular transactions, was there an Option Agreement involving 50,000 shares of stock in Gellman Manufacturing Company?

A Yes.

Q Was it your understanding in December of 1962 when you severed your relationship with Divine & Fishman that it had an option to purchase 50,000 shares of stock of Gellman Manufacturing Company?

A Yes.

Q Now, Mr. Albert, after you severed your

relationship with Divine & Fishman, did you transfer the stock which you previously owned to some person or company, or did you continue to own it and keep it?

A I don't remember, but I am quite confident that it was taken back by Divine & Fishman. I am almost positive of that.

Q Do you remember what the effective date of that termination of your relationship with Divine & Fishman was? Was it the end of December of 1962?

A I am just almost positive that that is the date.

Q From that point in time, did you ever do any work or perform any services for Divine & Fishman?

A From '62 on?

Q Yes.

A No.

Q So you severed with them entirely?

A Yes.

Q Did you ever do any consulting work for either Divine & Fishman or any successor of Divine & Fishman?

A I did not.

Q Did you continue to maintain any kind of a

business relationship with either Mr. Divine or Mr. Fishman?

A None.

Q Were there any other investments where you were a co-investor?

A No.

Q You had no business relationship with them at all from that time on?

A Absolutely not.

Q Would that be true, too, of any of the other parties who became involved with Divine & Fishman?

A I don't know.

MR. CHESLER: Mr. Brennan, would you mind if I asked a question? When Mr. Brennan asked you whether you had any other transactions with Divine & Fishman, was the Gellman option the only option that was left open? Is that what you are getting at?

MR. BRENNAN: Let's clarify that for the record.

Q I am speaking of other options or agreements that you had already entered into before terminating.

THE WITNESS: A None whatsoever.

Q Part of your termination gave you certain rights under various options and warrants?

A 0090

A Yes.

Q And you had some dealings with them with respect to those, I take it, but other than that, did you have any other dealings?

A I did not have dealings. From that date on, my attorneys had dealings with them.

Q None since?

A Never. I never had any contact with them.

Q Did you ever receive notice from Divine & Fishman that any of the options or warrants that had been granted to you as part of your termination were in such form as you could exercise an interest on them?

A I don't remember, but I doubt it because I recall my attorney discussing this with me from time to time and then writing to these people for current status on these various things.

Q Who was your attorney at that time?

A Same attorney ever since I have been involved; Perlman, Hecht & Chesler.

Q And it was at your instructions that he wrote to Divine & Fishman?

A Yes, after discussing it.

Q Do you know whether or not he ever wrote

to a firm called Golkin, Bomback & Co?

A Yes. I was aware of Golkin, Bomback & Co.

Q And it was your understanding that Golkin, Bomback & Co. were the successors to Divine & Fishman?

A Yes.

Q Same company with a different name?

A Oh, I don't know that, but I know that they were the successors. I don't know what the-- You know, this is after I left.

Q Did you have a right or an interest to acquire stock in Bloomfield Industries, Inc?

A Yes.

Q Did you have a right or an option to acquire stock in a company known as General Photos, Inc?

A I don't remember that one. I may have. It would be spelled out in the contract, but I don't recall.

Q But there were several companies that you had a right to acquire an option or interest in in the event that Divine & Fishman was able to exercise an option?

A Right.

Q And were all those transactions similar

in the respect that Divine & Fishman had to exercise an option or do something to acquire an equity interest in a corporation before you got a percentage of whatever they acquired?

A I don't think that is accurate, but I think it was possible for them to sell those warrants and for me to get my ten percent of the sale without actually exchanging them.

Q Well, with that qualification, was what I said true?

A Yes, yes.

Q Now, on any of those particular transactions, did you exercise options or receive proceeds from the sale of either options or warrants or the exercise of options?

A Yes.

Q What companies did you receive it from?

MR. CHESLER: Well, is Mr. Coleman interested in any of these others? I don't want to have him not answer.

MR. BRENNAN: They might not have a direct bearing on this case, but I think the evidence may be very, very significant. I will rephrase the question.

Q The question is, that at the time you severed your relationship with Divine & Fishman, there were certain transactions where you had an interest in acquiring either warrants, options, or if Divine & Fishman exercised an option, to obtain a percentage of the stock or equity that they acquired by exercising an option, is that correct?

THE WITNESS: A Yes.

Q Now, other than the Gellman Manufacturing Company transaction, were there any other transactions where you received notice from Divine & Fishman that a particular option or warrant was going to be granted?

A Well, by this time it was Golkin and Bomback, and it just seemed-- I don't recall the answer to your question, but it seems to me that Ray Perlman was asking these fellows about this thing constantly, and in the course of his inquiring, received answers which spelled out the status of these things.

Q So you were informed as to the status?

A Yes.

Q But was there ever a time when you received either any moneys or securities by virtue of these?

A Yes, there was.

Q And was it in connection with companies other than Gellman Manufacturing?

A Yes.

Q And did you receive written notice from Golkin, Bomback prior to your receiving either the money or securities on these different transactions?

A I don't recall that, I just don't.

Q Would the correspondence between Golkin, Bomback and your attorneys be the entire correspondence relating to that?

A The entire correspondence would be in my attorneys'-- Yes. If what you suggest is true, that something was written to me, I would have sent it to Ray Perlman.

Q Mr. Albert, do you have any objection to having your attorneys produce those documents?

A None.

Q Now, with respect to the Gellman Manufacturing transaction, do you remember being notified at some point in time by Golkin, Bomback that they were going to exercise an option that they had to buy stock of Gellman Manufacturing Company?

MR. CHESLER: I think he answered that; that that was between Ray Perlman and this Golkin.

MR. BRENNAN: He answered it generally, but now I am asking specifically about this one.

THE WITNESS: A I don't recall seeing a letter to that effect. If it came, he'd have it in the file, but I do not believe--as--I just--

MR. BRENNAN: Q You don't believe you received it?

A No. I mean, it just seems obvious that my attitude was one of attempting to keep on top of these things.

Q And you were doing that through your attorneys?

A Yes.

Q Okay. Well, did there come a point in time where you were required to send money to either Golkin, Bomback or some other person to exercise the Gellman Manufacturing option or your interest in it?

A Yes.

Q What was your interest in the Gellman Manufacturing option? Was it ten percent?

A Yes. Five thousand ~~a year in~~ shares. *R.M.G.*

Q And do you recall that the purchase price under the Option Agreement was \$2 per share?

A Yes.

Q And did you send \$10,000 to someone?

A Yes.

Q To whom did you send it?

A I don't recall, but I think it was to Golkin, Bomback. I don't think it was to an attorney.

Q Was it done through your attorney?

A Yes.

Q Were most of the communications between Golkin, Bomback and yourself carried out by your attorney?

A Almost exclusively.

Q Did you ever have occasion to discuss the Gellman option with anybody at Golkin, Bomback directly?

A I don't recall doing that.

Q Never discussed the matter at all with Saul Golkin?

A I don't recall it.

Q You don't recall having any conversation with him at all?

A Yes. I recall him calling me and discussing the warrant and discussing some attitudes. He called me for information on his behalf, concerning Divine & Fishman and his relationship with them, which I refused, and I referred him to my attorneys.

Q When did he call you about that?

A Sometime after I made the agreement with Divine & Fishman.

Q Sometime subsequent to December of 1962?

A Yes, and that is all I recall.

Q Can you place it in time prior to the time you sent the \$10,000?

A \$10,000 wasn't sent until 1967 or so.

Q All right. Now, when in relation to the time in 1967 when you sent the \$10,000 did you have this conversation with Mr. Golkin?

A No, no. This was in 1962 or thereabouts; '63, early '63.

Q Okay. My question, Mr. Albert, is in relation to that period of time in 1967, about the time when you were sending the \$10,000 to Golkin, Bomback, did you at that time discuss the exercise of the option with Saul Golkin?

A Yes. He called me and asked me whether I would go forward with it, and I said I would, because we had written him and asked him the status and he pointed out that this thing was coming to fruition, and he asked me if I was going to send

my money in.

Q Did he ask you anything else at that time?

A I don't recall him approaching any other subject.

MR. CHESLER: I assume, Mr. Brennan, you are referring, when you say any other thing, you are referring to the Gellman option?

MR. BRENNAN: Yes. Anything else relating to the exercise of the Gellman option by--

MR. CHESLER: And your answer is you don't remember anything else relating to the Gellman option?

THE WITNESS: No.

MR. BRENNAN: Q Well, do you accept your attorney's statement as what your testimony is?

THE WITNESS: A Well, I don't recall--

Q Saul Golkin discussing anything else with you about the Gellman option?

A I can't recall any reason why I would have wanted to be except naturally cooperative. I don't see any reason in our relationship-- I don't recall. That is the answer.

Q Would you say that your relationship with Saul Golkin and Golkin Company at that time was somewhat distant?

A 0099

A No, completely business. See, they had nothing to do with Divine & Fishman. I didn't know them from Adam, and this was purely and simply cold, hard business with me and this was nothing more than that.

Q All you were interested in was being assured that your rights under your agreement were fulfilled by Golkin, Bomback?

A Exactly right.

Q You didn't undertake to do anything else on their behalf?

A None whatsoever.

Q And they did nothing for you but live up to the agreement?

A Not a thing.

MR. CHESLER: Off the record.

(Discussion outside the record.)

MR. BRENNAN: Q During this period in 1967, Mr. Albert, when you were sending the \$10,000 to Golkin, Bomback so that your rights under your agreements with Divine & Fishman would be protected and you would receive ten percent of the stock they were entitled to in Gellman Manufacturing Company, did you have any business relationship

A 0100

with John Coleman?

THE WITNESS: A I'd have to check my records. I don't think so. I think that my records will indicate that I had some business relationships with him while I was at Paine, Webber earlier, like '63, '64, so forth, and they were his personal business transactions; nothing to do with this.

Q Okay. Did you have anything to do with Mr. Coleman in 1967 in connection with the Gellman option?

A I don't believe so.

MR. CHESLER: Well, did you or didn't you?

THE WITNESS: A I did not. I did not.

MR. BRENNAN: Q You never discussed the option with John Coleman?

A Not to my memory. If he came to my office and discussed it with me, I don't recall it.

Q You don't recall initiating it?

A No.

Q Mr. Albert, when was the last time you had any contact with Golkin, Bomback & Co. either personally or through your attorneys?

A You mean correspondence?

Q Yes, either by telephone, personally.

A Telephone was today.

Q Today?

A Yes.

Q Who was it that you spoke to?

A Saul Golkin called me.

Q He called you today?

A Yes.

Q What did he say to you?

A He indicated that--

MR. CHESLER: He asked you, "What did he say to you?"

THE WITNESS: A He said that he heard that I was going to go for a deposition, and he wanted to discuss with me the fact that I had discussed John Coleman with him in 1967, and I indicated to him that that was an inaccurate statement of the facts.

MR. BRENNAN: Q How long did your conversation with Mr. Golkin take?

A About four or five minutes. It was quite a short conversation.

Q He called you from New York?

A Yes.

Q Did he say anything else to you other than

what you have already testified?

A No.

Q You didn't say anything else to him?

A No.

Q And today you told Mr. Golkin that you did not talk to Mr. Coleman in 1967 on behalf of Mr. Golkin or Golkin, Bomback?

A That is true.

Q Prior to your telephone conversation with Mr. Golkin of today, Mr. Albert, when was the last time that you had any contact with Golkin, Bomback or Saul Golkin?

A When they sent me the proceeds of the Gellman transaction.

Q That was in 1967?

A No. That is 1971, the sale. This was consummated just recently.

Q Do you recall at what price the Gellman stock-- Strike that. The stock in Gellman Manufacturing is now traded under the name of Amco Industries, is that correct?

A Yes.

Q Now, when the option stock was sold just recently, do you recall what was its price per share?

A First-- Well, the option stock-- I see what you mean. The price was, at varying prices, at approximately \$19 a share.

MR. CHESLER: Mr. Brennan, do you mean what was the option price exercised at?

MR. BRENNAN: No. The exercise was \$2 a share, wasn't it?

THE WITNESS: Yes.

MR. BRENNAN: Q And when Saul Golkin or Golkin, Bomback sold the stock in this year, they sold it at approximately \$19 a share?

THE WITNESS: A Yes. I can give you the facts. Maybe it was like eighteen and three-quarters; somewhere in that area.

MR. CHESLER: And that was less commissions?

THE WITNESS: Yes. That's before.

MR. CHESLER: Were there some attorneys' fees involved in obtaining the negotiability of the options as a result of S.E.C. regulations?

THE WITNESS: Yes.

MR. CHESLER: And you paid your proportionate share of those expenses?

THE WITNESS: True, and, well, besides, I had my own attorneys' fees over the years.

MR. BRENNAN: Q Prior to the sale and the concluding of the Gellman transaction, did you have any other contact with Saul Golkin and Golkin, Bomback since 1967?

THE WITNESS: A I don't recall because I don't recall if any of the other warrants were sold during that period. I don't recall the dates.

Q They might have?

A Yes, they might have. I'd have to refresh my memory, at which time I would have received my ten percent.

MR. BRENNAN: I have no further questions.

MR. HIRSHMAN: And I am in no position to ask. There may be a time later on in the course of this action that we may have to take your deposition. At this point I don't feel I have the right to cross examine.

MR. BRENNAN: Mr. Albert, under the Court Rules, you are entitled to read this deposition and then sign it to be sure that the court reporter has taken everything down accurately, and that is a privilege and a right that you have under the Court Rules. As far as I am concerned, you are perfectly free to waive that if you want; otherwise,

when she writes it up, she will contact you and you will have to go over to her office and read the deposition and sign it.

MR. CHESLER: I think that you'd like to make sure that this nice young lady transcribed everything.

MR. BRENNAN: So you won't waive?

MR. CHESLER: No.

MR. BRENNAN: Mr. Albert, the subpoena that was served on you directed you to produce certain correspondence and documents. Have you searched your records and have you found any of the documents called for in the subpoena?

THE WITNESS: Yes. I have no documents. Any documents which were sent to me of a legal nature would be in my attorneys' files, and any documents that belonged to Divine & Fishman I did not take when I severed my relationship. Those files would be there. They would have that.

MR. CHESLER: Are you calling for his contract with Divine & Fishman?

MR. BRENNAN: A great number of documents that were called for in the subpoena, and his answer stands as to all of those.

THE WITNESS: Yes. I don't have files, Divine & Fishman files.

A 0106

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

I wish to make the following changes, for the following reasons:

PAGE LINE

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(Signed)

Robert M. Albert

A 0107

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I have read the foregoing transcript
of my deposition, consisting of pages 1 to 38,
inclusive, and the foregoing is a true, correct
and complete transcript of my testimony so given
at the time and place aforesaid, and I again
subscribe and make oath to the same.

Robert M. Albert

SUBSCRIBED AND SWORN TO
before me this 28th day of
July, A.D., 1971.

Barbara J. Snell
Notary Public

A 0108

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, BARBARA J. SMALL, a notary public
in and for the County of Cook and State of Illinois,
do hereby certify that heretofore, to-wit, on the
17th day of May, A.D., 1971, personally appeared
before me at Suite 5000, One First National Plaza,
in the City of Chicago, County of Cook and State of
Illinois, ROBERT M. ALBERT, a witness called by the
plaintiff, in a certain cause now pending and
undetermined in the United States District Court
for the Northern District of Illinois, Eastern
Division, wherein John Coleman is plaintiff and
Golkin, Bomback & Co., Inc. and Saul Golkin are
defendants.

I further certify that the said witness,
ROBERT M. ALBERT, was by me first duly sworn to
testify the truth, the whole truth, and nothing but
the truth in the cause aforesaid; that the testimony
then given by him was by me reduced to writing in
the presence of said witness, by means of shorthand,
and afterwards transcribed upon a typewriter, and
the foregoing is a true and correct transcript of
the testimony so given by him as aforesaid.

I further certify that after said testimony had been so transcribed it was submitted to the witness for examination and read over by the said witness and signed by him.

I further certify that the taking of this deposition was pursuant to order of court, and that there were present at the taking of this deposition Richard J. Brennan, Esq. and John Malugen, Esq., of the firm of Winston, Strawn, Smith & Patterson, One First National Plaza, Chicago, Illinois, on behalf of the plaintiff, Harold C. Hirshman, Esq., of the firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal, 69 West Washington Street, Chicago, Illinois, and Morton C. Chesler, Esq., of the firm of Perlman, Hecht & Chesler, 10 South LaSalle Street, Chicago, Illinois, on behalf of Robert M. Albert.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 28th day of July, A.D., 1971.

Barbara J. Anall
Notary Public, Cook County, Illinois.

Exhibit # 4

A 0110

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

JOHN COLEMAN,

Plaintiff,

-against-

GOLKIN, BOMBACK & CO., INC., a
corporation; GOLKIN, BOMBACK &
CO., a partnership; and SAUL
GOLKIN, a partner,

Defendants.

No. 71C 1037

FILED

NOV 18 1971

H. STUART CUNNINGHAM
At _____ o'clock
CLERK

DOCKETED

Deposition of SAUL GOLKIN, one of the
defendants, taken by the plaintiff pursuant to
notice, at the offices of Messrs. Manes, Sturim,
Roth & Fisher, 250 Park Avenue, New York, New
York, on Wednesday, July 7, 1971, at 10:25 A.M.,
before Herbert H. Prokop, a notary public of the
State of New York.

PROFESSIONAL REPORTING SERVICE

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NEW YORK, N. Y. 10038

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A P P E A R A N C E S :

For the Plaintiff:

MESSRS. WINSTON, STRAWN, SMITH & PATTERSON
One First National Plaza
Chicago, Illinois 60670
By: RICHARD J. BRENNAN, ESQ., of Counsel

For the defendant Saul Golkin:

MESSRS. MANES, STURIM, ROTH & FISHER
250 Park Avenue
New York, New York
By: DAVID FISHER, ESQ., of Counsel

- - - - -

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties hereto that:

Filing and certification of the original of the
within deposition be, and the same hereby are, waived;

All objections, except as to the form of the ques-
tion, are reserved to the time of trial of this action;

The within deposition may be signed and sworn to
by the witness before any notary public, with the same
force and effect as if signed and sworn to by him before
a Judge of this Court or a Clerk thereof.

- - - - -

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3 MR. BRENNAN: Let the record show that the
4 deposition of Mr. Saul Golkin is being taken at
5 this time and place pursuant to notice of depo-
6 sition served on counsel for the defendant Saul
7 Golkin.

8 Let the record further show that notice of
9 this deposition was served on Mr. Hirshman, of the
10 firm of Sonnenshein, Levinson, Carlin, Nath &
11 Rosenthal on June 22, 1971, and that Mr. Hirshman
12 has advised me that he does not intend to appear
13 and participate in these proceedings.

14 The record should further reflect, then, there
15 is no attorney representing the defendant Saul Golkin,
16 whose appearance is on file in this case, present
17 at this deposition.

18 MR. FISHER: Just a moment. The deposition
19 is being conducted at the offices of Manes, Sturim,
20 Roth & Fisher, and I, David Fisher, am a partner in
21 that firm. We do represent Mr. Golkin. We have
22 not filed any notice of appearance, however, for
23 Mr. Golkin in an action that is now pending in the
24 Eastern Division, Northern District of Illinois,
25 United States District Court.

We are reserving whatever rights we have with

Golkin

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1
2 respect to an attack concerning venue or juris-
3 diction in this matter.

4 MR. BRENNAN: Let the record further reflect
5 that the notice of deposition directs the party
6 Saul Golkin to produce at the deposition certain
7 documents described in the notice of deposition,
8 and that, when I appeared in this conference room
9 some 15 minutes or so ago, with Mr. David Fisher,
10 he exhibited to me what appeared to be three volumes
11 of minutes, two of them entitled "Divine & Fishman,
12 Inc.," one of them entitled "Golkin, Bomback & Co.,
13 Inc.," and said these are the documents that are
14 being produced.

15 Mr. Fisher then requested an opportunity to
16 examine my copy of the transcript of the deposition
17 of Mr. Berman, which was taken in this cause on May
18 17, 1971. He left the room and I proceeded to ex-
19 amine the first volume of minute books. Upon his
20 return, Mr. Fisher advised me that he objected to
21 my examining those documents and removed the pieces
22 of paper I had inserted at certain pages in the
23 minute book.

24 MR. FISHER: I advised Mr. Brennan that this
25 was an examination before trial, a deposition, and

Golkin

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not a discovery and inspection.

MR. BRENNAN: Mr. Fisher, I have nothing further in the way or preliminaries. May I proceed?

MR. FISHER: Please proceed.

SAUL GOLKIN, having been duly sworn by the notary public, was examined and testified as follows:

EXAMINATION BY MR. BRENNAN:

Q Would you state your full name and address for the record.

A Saul Golkin.

Q What is your address, Mr. Golkin?

A 207 East 74th Street, New York City.

Q What is your present --

A I'm with the firm of Axelrod and Company.

Q What is their business?

A Brokerage.

Q How long have you been with them?

A Since December of last year.

Q Generally, what are your duties there?

MR. FISHER: Excuse me. What relevancy is that in this particular case?

MR. BRENNAN: Mr. Fisher, I can't stop you from making objections. I want the record to show you have no right to participate in these proceedings at

Golkin

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1
2 all, as far as I'm concerned.

3 MR. FISHER: In that case, I'm going to call
4 a halt to this. If I have no right to participate
5 in these proceedings and Mr. Golkin is not to be
6 represented by counsel, I'm going to ask we adjourn
7 this examination.

8 MR. BRENNAN: You are here and I have no ob-
9 jection to your making whatever statements you wish
10 to make on the record.

11 MR. FISHER: If you are going to urge, every
12 time I make an objection, that I have no right to
13 participate in these proceedings, and that Mr.
14 Golkin is not going to be governed by certain ob-
15 jections I make, there is no point in continuing,
16 because I do not intend to have Mr. Golkin under
17 examination without representation. If you will
18 not accept our representation of him for the pur-
19 poses of this examination, we're going to ask that
20 it be adjourned.

21 MR. BRENNAN: I have come from Chicago to take
22 Mr. Golkin's deposition.

23 MR. FISHER: I have made this office available
24 for that purpose.

25 MR. BRENNAN: As you are required to do, under

1
2 the rules.

3 MR. FISHER: I'm not required to do that.

4 You couldn't force or impose this office upon us.

5 We did it as a courtesy to you. We did it as a

6 courtesy because we expected we would be treated

7 as counsel for Mr. Golkin. If you're not going to

8 treat us as counsel for Mr. Golkin, this office is

9 not available to you.

10 MR. BRENNAN: Off the record.

11 (Discussion off the record)

12 BY MR. BRENNAN:

13 Q Mr. Golkin, what are your present duties with
14 Axelrod and Company?

15 MR. FISHER: I object to the inquiry as being
16 irrelevant in this matter.

17 MR. BRENNAN: Your objection is noted.

18 (To witness) Would you go ahead and answer.

19 MR. FISHER: I don't think he should answer
20 objections that have been noted.

21 MR. BRENNAN: Are you instructing him not to
22 answer?

23 MR. FISHER: I'm instructing him not to answer.

24 Q Mr. Golkin, would you tell me generally what
25 your educational background has been, please.

Golkin

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1
2 A Surely. Graduated public school, couple of
3 years of high school, and various special courses in
4 banking and brokerage.

5 Q Where did you take those courses?

6 A New York Stock Exchange Institute.

7 MR. FISHER: Are you proposing to lay a foun-
8 dation for his expertise, in any manner? Otherwise,
9 I don't understand why his educational background
10 has any relevancy in this action.

11 Q Do you hold a degree from any university?

12 A No, I do not.

13 Q Mr. Golkin, prior to December 12, 1962 what was
14 your business or occupation?

15 A Broker.

16 Q With what firm were you associated?

17 A Golkin, Bomback & Company

18 Q Was that a partnership?

19 A It was.

20 Q Were you a partner in that firm?

21 A I was.

22 Q Who were the other partners?

23 A Milton Bomback, George Golkin, and at that time
24 I don't recall whether it was Mr. James Burke or Mr.
25 Herbert Shander.

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Golkin

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Q Was there a written partnership agreement between the partners of Golkin, Bomback & Company?

4

5

A I believe there was.

6

Q Do you have a copy of that agreement at the present time?

7

8

A No, I don't, unless they're in the books there.

9

MR. FISHER: It is not in these papers.

10

Q Where were the offices of Golkin, Bomback & Co. prior to December 12, 1962?

11

12

A 67 Broad Street.

13

Q In New York?

14

A Yes.

15

Q Was Golkin, Bomback & Co. a member of any stock exchange?

16

17

A Yes. Member of the New York and American Stock Exchange.

18

19

I beg your pardon. Not member of the American Stock Exchange, just members of the New York Stock Exchange.

20

21

Q Can you tell me, Mr. Golkin, what the various equity interests of the partners were at that time?

22

23

24

A Yes. Mr. Bomback and myself had equal participation. I think it was 42 1/2 percent. I'm not a

25

hundred percent ^{sure} correct. The other was distributed between

Not

Golkin

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George Golkin and either Jimmy Burke or Herb Shander.

Q It would be fair to say you and Mr. Bomback were the principal partners?

A Right.

Q Was the firm of Golkin, Bomback & Co. engaged in any particular type of the securities business?

A Brokerage, underwriting.

Q No particular specialty?

A I don't think there is any such thing as a specialty. We were brokers. We traded for our own account and we were underwriting.

Q Who was the chief executive officer of the partnership?

A I was the chief executive officer, as far as making the decisions in the situation which we traded. Mr. Bomback was partner in charge of all back-office operations, and he was a certified public accountant.

Q What do you mean by back-office operations?

A Cashier, deliveries, financing, getting back loans.

Q Do you know, Mr. Golkin, whether there were ever any documents filed on behalf of Golkin, Bomback & Co. with either the State of New York, City of New York or any other municipal organization, that reflected its

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doing business under the name of Golkin, Bomback & Co.?

A I'm sure there must have been.

Q Where are those documents and the records of Golkin, Bomback & Co., a partnership, now?

A I don't know where they are now.

Q During the time that Golkin, Bomback & Co. was in business, who was responsible for keeping the books and records?

A Milton Bomback.

Q Where does Milton Bomback reside at the present time?

A Somewhere on Long Island. He's employed as president of Charter New England Corporation.

Q Where are its offices?

A New York City.

Q What is its business?

A Brokerage.

Q Do I understand, Mr. Golkin, it was Mr. Bomback who was responsible for keeping both the financial and accounting books and records of Golkin, Bomback & Co.?

A That is right.

Q But you would periodically review these books?

A ~~Of course~~. I wouldn't review the books but we would discuss them.

HCH

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Golkin

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Q How long prior to December 12, 1962 had the partnership of Golkin, Bomback & Co. been in business?

3

4

A Since 1959.

5

6

Q When it was started in 1959 were you and Mr. Bomback the principal partners?

7

A Yes.

8

9

Q I take it you and Mr. Bomback continued to be the principal partners until such time the operations of the partnership ceased.

10

11

A That is correct.

12

13

Q When did the operations of the partnership cease?

14

15

A I believe sometime in 1962, the latter part of '62.

16

17

MR. FISHER: Was that at the time you became part of Divine & Fishman?

18

19

THE WITNESS: Right. I think it was 1962.

20

21

Q At that time, Mr. Golkin, was there any dissolution agreement entered into between the partners of Golkin, Bomback & Co.?

22

A Yes.

23

24

Q Do you have a copy of that dissolution agreement?

25

A No, I do not.

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Q Did you receive a copy of it at the time it was executed?

A I don't recall.

Q Was a partnership income-tax return for the year 1962 filed on behalf of Golkin, Bomback & Co.?

A There must have been.

Q Did you sign it?

A No.

Q Who would sign it?

A Milton Bomback.

Q Is it your recollection that the dissolution agreement between the partners of Golkin, Bomback & Co. was executed sometime in December of 1962?

A I have no real recollection, unless the books show it, and I think the books do show it.

Q Are you referring to the books that are here in the room now?

A That's right.

MR. FISHER: Would the Divine & Fishman books show that?

THE WITNESS: Golkin, Bomback. I think the agreement with Divine & Fishman --

MR. FISHER: Provided for such?

THE WITNESS: That's right.

Golkin

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MR. FISHER: Off the record.

(Discussion off the record)

MR. BRENNAN: Would you mark this as Exhibit 1,
as of this date.

(Photocopy of agreement between Saul
Golkin, Milton Bomback, George Golkin and
Divine & Fishman, Inc. marked Golkin Exhibit
1 for identification.)

Q Mr. Golkin, I show you what has been marked as
Golkin Deposition 1 for identification, as of this date,
and ask you whether or not you recognize that document
(handing to the witness).

MR. FISHER: We're noting the fact that that's
a Xerox copy, of course.

MR. BRENNAN: Right.

Q (Continuing) Can you identify the document,
sir?

A I identify a Xerox copy of an agreement, which
I presume has been signed on December 12, 1962.

Q That's an agreement between yourself, Milton
Bomback, George Golkin and Divine & Fishman, Inc., a
New York corporation; is that correct?

A That is correct.

Q Do I understand, Mr. Golkin, about December 12,

Golkin

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2 1962, you executed the original of that agreement?
3

4 A I probably did.

5 Q Would you examine that document and tell me
6 whether or not it is the same as the copy that you exe-
7 cuted.

8 A Yes.

9 Q And there are attached to that agreement cer-
10 tain exhibits and schedules. Were the exhibits and
11 schedules attached to the original when you signed it?

12 A Right.

13 Q Are the exhibits and schedules attached to that
14 copy the same as the ones attached to the document that
15 you signed in December of 1962?

16 A I believe so.

17 Q Do you have your copy of that agreement?

18 A No.

19 Q Did you receive a copy of that agreement?

20 A I probably did. I don't recall.

21 Q But you do not have that at the present time?

22 A I do not.

23 Q Do you know what happened to your copy?

24 A It may have been in the file Mr. Bomback kept.

25 Q Mr. Golkin, did you keep your own personal copy
of agreements that you executed on your own behalf, as

Golkin

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1
2 opposed to on behalf of Golkin, Bomback & Co., a part-
3 nership?

4 A I don't know what agreement you're referring
5 to.

6 Q I'm referring specifically to that one, sir.

7 A No.

8 Q You did not keep your own copy?

9 A No.

10 Q Do I understand, Mr. Golkin, that, after you
11 executed the agreement of December 12, 1962, the business
12 of Golkin, Bomback & Co., a partnership, ceased?

13 A That's right.

14 Q Was that business transferred to Divine &
15 Fishman, Inc.?

16 A Certain assets were transferred, but not the
17 business. Accounts and certain assets of the partner-
18 ship were transferred.

19 Q Mr. Golkin, when you say certain assets were
20 transferred, are you referring to the assets listed on
21 Schedule B attached to the agreement?

22 A There was more than that. All the accounts of
23 Golkin, Bomback & Co. were transferred.

24 Q What is your recollection as to how many ac-
25 counts there were?

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A I wouldn't have the slightest idea at this stage.

4

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Q What was the dollar volume of those accounts?

6

A I wouldn't have the slightest idea.

7

Q You have no way of evaluating or estimating?

8

A No; I have no recollection whatsoever.

9

Q Were there other assets and properties of the

10

partnership that were not transferred to Divine & Fishman?

11

A I don't recall.

12

Q But you do recall that all of the assets were

13

not transferred to Divine & Fishman?

14

A I don't recall whether all the assets were

15

transferred or whether some were not transferred. I

16

know that most of the assets were. It was certainly

17

more than that.

18

Q When you say "more than that," you mean more

19

than that listed on Schedule B?

20

A Of course.

21

Q And specifically, you say, in addition to the

22

assets listed on Schedule B, the accounts of the partner-

23

ship were transferred to Divine & Fishman.

24

A Right.

25

Q Was there anything else, other than the accounts,

1
2 transferred to Divine & Fishman?

3 A Probably a stock-exchange receipt. ^{seat} H-17

4 Q Would the transfer of that stock-exchange
5 ^{seat} receipt be reflected -- ~~that~~

6 A I don't know how the transfer took place. It
7 was done legally, with the permission of the New York
8 Stock Exchange.

9 Q But, the transfer of the stock-exchange receipt ^{seat}
10 of the partnership, Golkin, Bomback & Co., would have
11 been reflected in the records of the New York Stock Ex-
12 change?

13 A It certainly would.

14 Q Other than the accounts and the New York Stock
15 Exchange receipt, ^{seat} was anything else transferred? H-17

16 A There must have been securities.

17 Q Do you know the value of the securities?

18 A I haven't the slightest idea at this stage.

19 Q Paragraph C of Schedule B says marketable
20 securities having an approximate value of \$35,000. Are
21 those the marketable securities you are referring to?

22 A It must have been more than that.

23 Q You say more than that?

24 A There must have been. They could not have
25 started a new firm with that capital.

Golkin

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3 Q At the time you, Mr. Bomback and Mr. George
4 Golkin entered into the agreement of December 12, 1962
5 was Divine & Fishman then an operating brokerage firm?

6 A It was.

7 Q Did it have offices in Chicago?

8 A Offices in Chicago and New York.

9 Q Do you know whether it then had a seat on the
10 New York Stock Exchange?

11 A I believe it did.

12 Q Do you know whether or not Mr. Bomback still has
13 in his possession the partnership records of Golkin,
14 Bomback & Company?

15 A No, I do not.

16 Q When was the last time you saw them?

17 A I can't recall.

18 Q Was it subsequent to December --

19 A I have no idea whatsoever.

20 MR. FISHER: I would like to note, Mr. Brennan,
21 I've been permitting you to make this examination,
22 although I frankly do not understand in what re-
23 spect it has any relevancy whatsoever to the case.
24 The fact that my silence is merely to afford you a
25 larger scope as I think is reasonably necessary,
but the relevancy still escapes me. Certainly I

Golkin

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would appreciate, if you have any idea as to what way it is relevant, to note that fact for the record.

MR. BRENNAN: Your comments are noted, Mr. Fisher. I'll just proceed with my interrogation and it will save us a lot of time.

MR. FISHER: It may. If you continue to be irrelevant, however, it may not.

Q Mr. Golkin, prior to December 12, 1962, were your full-time business activities conducted through Golkin, Bomback & Co., a partnership?

A It was.

Q That was then your only business?

A Yes.

Q Mr. Golkin, I take it sometime prior to December 12, 1962 you, either alone or with Mr. Bomback and Mr. George Golkin, commenced some negotiations with Divine & Fishman concerning your acquisition of stock in that company.

A Most of these negotiations were conducted by Mr. Bomback and our attorneys, who were then Golenbock & Barell.

Q Who at Golenbock?

A Mr. Seymour Kleiman.

Golkin

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3 Q He was the attorney for Golkin, Bomback & Co.,
4 a partnership?

5 A That is correct.

6 Q Did you participate in any negotiations with
7 Divine & Fishman?

8 A I must have been in a few conferences. Ac-
9 tually, as far as the negotiation, my answer would have
10 to be no.

11 Q What was the object of terminating the business
12 of Golkin, Bomback & Co., a partnership, and acquiring
13 stock in Divine & Fishman, Inc.?

14 A We thought, Mr. Bomback and I, after discussing
15 the fact that Divine & Fishman were looking for a merger,
16 that this could be advantageous to Golkin, Bomback &
17 Company.

18 Q In your consideration of the proposed merger,
19 who were to be the chief executive officers of the --
20 let's call it the new corporation?

21 A Hal Divine, myself, Mr. Bomback and Seymour
22 Fishman.

23 Q Subsequently you and Mr. Bomback and Mr. George
24 Golkin did acquire stock in Divine & Fishman.

25 A Yes.

Q Subsequent to that, the name of Divine & Fishman

Golkin

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1
2 was changed to Golkin, Divine & Fishman?

3 A Correct.

4 Q Can you tell me, just generally, Mr. Golkin,
5 what the duties and responsibilities of yourself and
6 the other executive officers of Golkin, Divine & Fishman
7 were, after the merger or your acquisition of stock in
8 Divine & Fishman?

9 MR. FISHER: Immediately after?

10 Q (Continuing) Say in January and February of
11 1962.

12 A My activities was managing partner, in charge
13 of production.

14 Q What did that consist of?

15 A Producing business for the firm, whether it be
16 with professional accounts or any other business that I
17 might bring into the firm.

18 Q What do you mean by professional accounts?

19 A Banks, insurance companies.

20 Q Institutional investors?

21 A That's right.

22 Q Other than that, I take it you dealt with the
23 individuals who would be buying and selling stocks.

24 A Yes. And try to watch it, to the best of my
25 ability.

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Q In addition to that, did Golkin, Divine & Fishman trade for its own name and own account?

4

A It did.

5

6

Q Were you responsible for that activity?

7

A I was.

8

9

Q Were you, so to speak, the buyer or the man who made the decision as to what was to be bought and what was to be sold for Golkin, Divine & Fishman's own account?

10

11

A I was; but at times I consulted with Milton Bomback.

12

13

Q What about with Mr. Divine and Mr. Fishman?

14

A Very rarely.

15

16

Q Would I be correct in assuming that again Mr. Bomback was primarily responsible for the administrative end of the business?

17

18

A For the back office of the business.

19

20

Q "Back office" is a word of art in the securities --

21

A I can only give you my own lingo.

22

23

It's the cage, the bookkeeping, stock record, bank loans. That was his phase of the business.

24

25

Q Mr. Golkin, at any time prior to the date that you executed the agreement that has been marked Golkin Exhibit 1, did you discuss, either with Mr. Bomback or Mr.

1
2 Divine, Mr. Fishman or anyone else, certain option
3 agreements that Divine & Fishman had as of December 12,
4 1962?

5 A I didn't discuss any option agreements. I
6 understood these were part of the assets Divine & Fishman
7 were bringing over to the new firm.

8 Q Among those assets was an option agreement
9 granted by Cellman Manufacturing Company; is that cor-
10 rect?

11 A That is correct.

12 Q In addition to that option agreement, there
13 were other option agreements or warrants or rights to
14 participate in equity interests of corporations; is that
15 correct?

16 A That is correct.

17 Q I take it you regarded all of those as assets
18 of Divine & Fishman.

19 A Of the new firm. In other words, of Golkin,
20 Divine & Fishman at that time.

21 Q Prior to your investment in Golkin, Divine &
22 Fishman, those were assets of Divine & Fishman, were
23 they not?

24 A That is correct.

25 Q When you and Mr. Bomback were making your

1
2 decision to invest in Divine & Fishman, you regarded
3 those as assets?

4 A That is correct.

5 Q Just in an effort to identify a little more
6 specifically what those particular options and warrants
7 were, Mr. Golkin, I refer you to a document called
8 Schedule A, which is attached to Exhibit A of the agree-
9 ment. That lists seven different corporations.

10 A Right.

11 Q Were those the corporations that had granted
12 to Divine & Fishman either options or warrants prior to
13 your investment in Divine & Fishman?

14 A I believe so.

15 Q In connection with those options or warrants,
16 were you aware of the fact that certain shareholders of
17 Divine & Fishman had an interest in those options and
18 warrants?

19 A No, I did not.

20 Q You did not know that at all?

21 A I did not.

22 Q Mr. Golkin, did you read the agreement of
23 December 12, 1962 before you signed it?

24 A I may have glanced through it, but, as long as
25 my attorney and Mr. Bomback said the agreement was all

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Golkin

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right to sign and Mr. Bomback signed it, I signed it.

3

Q You are saying you were relying on your attorney's advice and then you signed it?

4

A Yes -- and also on Milton Bomback.

5

Q Did you not know, Mr. Golkin, when you signed the agreement, that, under the terms of Exhibit A, an agreement between Robert Albert and Divine & Fishman, Mr. Albert had a right to ten percent of whatever options and warrants were granted?

6

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A I did not. I didn't recall it.

12

Q And you don't recall now that you knew it then?

13

A No, I do not.

14

Q I take it your answer would be the same with respect to the rights of Milton Heller, as shown in Exhibit B.

15

16

17

A That is right.

18

Q Did you read Exhibits A and B to the agreement before you signed the agreement?

19

20

A I probably glanced through it. I don't recall at this time exactly what happened when this agreement was given to me for signature.

21

22

23

Q But, it is your testimony now that you were not, in 1962, aware of the fact that certain shareholders of Divine & Fishman had an interest in the options or

24

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Golkin

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2 warrants which you characterized as assets of Divine &
3 Fishman?
4

5 A As far as I can recall at this stage of the
6 game, I had no knowledge.

7 Q Did you have any knowledge that certain employees
8 of Divine & Fishman had interests or rights in those
9 options or warrants?

10 A No, I did not.

11 Q Did you know, before you executed the agreement
12 on December 12, 1962, that John Coleman had an option or
13 interest in the option granted by Gellman Manufacturing
14 to Divine & Fishman?

15 A I did not.

16 Q Prior to the time that you and Mr. Bomback
17 made your investment in Divine & Fishman, did you or he
18 or anybody on your behalf examine the books and records
19 of Divine & Fishman?

20 A I'm fairly certain Mr. Golenbock must have,
21 Mr. Golenbock and Barell, otherwise they would not have
22 approved the participation.

23 MR. FISHER: Did you personally examine them?

24 THE WITNESS: No.

25 MR. FISHER: Did you see anyone examine them?

THE WITNESS: No.

Q Did you instruct your attorneys to examine the books and records?

A I didn't give them any instructions.

Q Who instructed them?

MR. FISHER: If anyone.

A In which manner?

Q As to how they should represent you in connection --

A Just represent us. I mean, in our negotia-
tions with Divine & Fishman.

Q Did Golkin, Bomback & Co., the partnership,
have independent accountants prior to December 12, 1962?

A We did.

Q Who were they?

A I don't recall. I know Fred Todman was our
accountant. ^{That} It was an accounting firm which specialized
in Wall Street accounting. And I believe it's Oppenheim,
Appel & Dixon. ^{that was our accountants. That}

Q Did you instruct your accountants to examine the books and records of Divine & Fishman?

A I personally did not.

Q Do you know whether in fact they did?

A No, I do not.

Q Do you know whether Mr. Bomback instructed them

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to make an examination?

A I assume he did. I don't recall at this time.

Q Mr. Golkin, would it be fair to say that after December 12, 1962, when you and Mr. Bomback acquired stock in Divine & Fishman, Inc., and thereafter the name of the company was changed to Golkin, Divine & Fishman, that you then became the chief executive officer of the company?

A I wouldn't say so.

Q You were one of the chief executive officers?

A One of the chief executive officers.

Q The other one being Mr. Bomback?

A Yes.

Q What about Mr. Divine and Mr. Fishman?

A They were supposedly in that category.

Q I take it that you and Mr. Bomback worked out of your offices here in New York.

A That is correct.

Q And that what formerly had been the offices of Golkin, Bomback & Co., a partnership, then became the offices of Golkin, Divine & Fishman, a corporation.

A That is correct.

Q The same people, same operation, different name.

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A Right.

3

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Q What about Mr. Divine and Mr. Fishman? Did they operate exclusively out of Chicago?

5

6

A Mr. Divine moved, or his operations were transferred, as far as I can recollect, mostly in New York.

7

Mr. Fishman stayed in Chicago.

8

9

Q Prior to December 12, 1962 Divine & Fishman had an office in New York?

10

A I believe they did.

11

12

Q Was that office consolidated with your office after December of 1962?

13

A Some of the personnel may have come over.

14

Q Was that office closed?

15

A Yes.

16

17

Q So, the old Divine & Fishman office in New York was closed.

18

A That is correct.

19

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Q I take it, again, you were devoting your full-time business activities to the operations of Golkin,

21

Divine & Fishman.

22

23

A To the trading, to the institutional -- to that end of the business. I paid no attention to the back

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office, that type of operation, as far as the firm was

25

concerned.

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3 Q Were you engaged in any other trade or business
4 at that time?

5 A I don't understand the question.

6 Q Did you have any other business interests,
7 other than your own personal investments?

8 A Outside of the fact I may have owned stock in
9 other corporations, no.

10 MR. BRENNAN: Would you mark this.

11 (Certificate of incorporation, issued by
12 Department of State, State of New York, marked
13 Golkin Exhibit 2 for identification.)

14 Q Mr. Golkin, I show you what has been marked
15 Golkin Exhibit 2 for identification, which is a certifi-
16 cate issued by the Department of State of the State of
17 New York, which describes the incorporation of Divine &
18 Fishman, Inc., and certain amendments to its articles of
19 incorporation.

20 The certificate indicates that on June 12,
21 1963 the name was changed from Golkin, Divine & Fishman,
22 Inc. to Golkin, Bomback & Co.

23 A If that's what it says, that's so.

24 Q Do you have a recollection of the name being
25 changed about that time?

A Yes, I have a recollection of the name being

1
2 changed.

3 Q Can you tell me why the name was changed at
4 that time?

5 A We bought out the interests, Mr. Bomback and
6 myself, of Mr. Divine and Mr. Fishman.

7 Q Was there a written agreement prepared that
8 you and Mr. Bomback and Mr. Divine and Mr. Fishman signed
9 at that time?

10 A I'm sure there must have been.

11 Q Do you have a copy of that agreement?

12 A I do not.

13 Q Do you know whether there is a copy of it in
14 the files and documents here?

15 MR. FISHER: No, it is not in the minutes.

16 There is, however -- so that there is no mystery
17 about it -- an indication in the minutes that on or
18 about June 10, 1963 there was a change in the officer-
19 ship of the company and Divine and Fishman ceased,
20 apparently, to be officers at that time, and Mr.
21 Golkin became president and Mr. Milton J. Bomback
22 executive vice president, secretary and treasurer,
23 and a host of other persons became vice presidents.

24 For your further information, the stock book
25 of Golkin, Divine & Fishman, Inc. reflects the

1
2 transfer of the Divine and Fishman interests in
3 that company to Messrs. Golkin, Bomback and others
4 at or about June 3, 1963.

5 Q In any event, Mr. Golkin, sometime in May or
6 June of 1963 you and Mr. Bomback bought out the interests
7 of Divine and Fishman?

8 MR. FISHER: It may have been June.

9 MR. BRENNAN: I said May or June.

10 A Yes.

11 MR. BRENNAN: Mr. Fisher has produced what appears
12 to be a stock-transfer book--

13 MR. FISHER: Stock-certificate book, not a
14 transfer book.

15 MR. BRENNAN: You are correct.

16 -- of Golkin, Divine & Fishman, Inc. It re-
17 flects, under Certificate No. 10, for 117 shares,
18 issues to Saul Golkin on May 9, 1963, transferred
19 from Seymour Fishman. However, that's marked "Void."

20 Q Do you recall you did or did not receive those
21 shares, Mr. Golkin?

22 A I have no recollection.

23 Q Under Certificate No. 11, for 351 shares, is-
24 sued to Seymour Fishman, dated May 9, 1963, transferred
25 from original issue, that's void. And you can't explain

1
2 that either?

3 A No.

4 Q Certificate No. 12 is for 515 shares, issued
5 to Saul Golkin on June 3, 1961 transferred from Harold
6 Divine and Seymour Fishman. That certificate is not in
7 the book. Do you have that certificate?

8 A I may have. I have to take a look at the vault.
9 I honestly don't know.

10 Q Is it your recollection that about that time you
11 acquired that stock interest?

12 A I remember acquiring some certificates. Ex-
13 actly at what time and what the certificates were, I
14 don't recall.

15 Q Did Mr. Bomback acquire some at that time, too?

16 A He must have.

17 Q After you and Mr. Bomback bought out the
18 interests from Mr. Divine and Mr. Fishman, do you recall
19 who were then the principal shareholders of Golkin,
20 Divine & Fishman?

21 A Myself, Mr. Bomback, Mr. Divine and Mr. Fishman.
22 If I remember correctly, we were all equal.

23 MR. FISHER: This is after you bought it out.

24 Q After you bought out their interest.

25 A Mr. Bomback and myself.

1

2

Q Were the principal shareholders.

3

A That is correct.

4

5

Q I take it you were also the officers and directors.

6

A The duties were the same.

7

8

Q When you bought out Mr. Divine and Mr. Fishman did the corporation still have the option that Gellman Manufacturing had granted it?

9

10

A It did.

11

12

Q And you were aware of that at the time you bought Divine's and Fishman's interests?

13

A I was aware we bought out all the assets.

14

15

Q After buying out Mr. Divine and Mr. Fishman did you continue to maintain an office in Chicago?

16

A Yes, we did.

17

18

Q Would you periodically go out to that office?

A Periodically, but very rarely.

19

20

Q During the period after you bought out Divine and Fishman, from 1963, say, to 1967, approximately how many times did you go to Chicago?

21

22

A Maybe two or three times a year.

23

24

Q How long would you stay there on each trip?

A I can't recall. Maybe one day, maybe three

25

days.

1

2

Q What was the purpose of your trip?

3

4

A Just to see the employees, the manager of the department, et cetera.

5

6

Q Stimulate the salesmen?

7

A Also to go out and visit the First National Bank of Chicago, which I had very close contact with, and try to develop business for the firm.

8

9

10

Q When you were in Chicago, you dealt with the employees of your company and with customers of your company?

11

12

A Correct.

13

14

Q From the time that you and Mr. Bomback bought out the interests of Mr. Divine and Mr. Fishman and the company's name was changed to Golkin, Bomback & Co., Inc., it continued in the brokerage business; is that correct?

15

16

17

18

A That is correct.

19

20

Q During the period 1963 to 1967, you and Mr. Bomback were the principal officers and directors?

21

22

A No, that is not true. I think Mr. Bomback left the firm -- I can't recall the date -- sometime in 1966.

23

24

Q In 1966?

A That's right.

25

Q But, until the time that he left, both of you

1
2 were the principal shareholders, officers and directors?

3 A That is correct.

4 Q When Mr. Bomback left in 1966, can you tell
5 me, just generally, what was then the financial position
6 of Golkin, Bomback & Co., Inc.?

7 A I can't tell you.

8 Q Had it made money in 1965, with regard to
9 profit?

10 A I can't tell you. I don't remember.

11 MR. FISHER: I really feel that is irrelevant.

12 Q During that period of time were you having
13 periodic audits made by outside accountants?

14 A Yes. And also the stock-exchange organization.

15 Q Who were your outside accountants?

16 A I think it continued to be Todman or Oppenheim,
17 Appel. I don't know when Haskins and Sells came in.

18 Q At some time they came.

19 A I don't know whether it was after Mr. Bomback
20 left or before.

21 We may have used Arthur Young one year. As a
22 matter of fact, we may have used Puder & Puder.

23 Q Do you have copies of the financial statements
24 those accountants prepared during the period 1963 to 1967?

25 A I do not.

1

2

Q You don't have them?

3

A No.

4

Q You say that Mr. Bomback left in 1966.

5

A I believe it was in 1966.

6

Q When he left, what happened to his stock?

7

A I bought it.

8

Q You bought all of his stock in what was then
Golkin, Bomback & Co., Inc.?

10

A Yes.

11

I don't know exactly the details of the trans-
action, but he was bought out.

12

13

Q Just after you bought out Mr. Bomback, were
there then any other shareholders in Golkin, Bomback &
Co., Inc.?

14

15

A We then dissolved Golkin, Bomback & Company,
Incorporated, as such, and formed a new firm: First
Hanover Corporation.

16

17

18

19

Q You say that you dissolved Golkin, Bomback &
Co.

20

21

A Yes. I don't know whether it was the latter
part of '65 or sometime in '66.

22

23

MR. BRENNAN: Off the record.

24

(Discussion off the record)

25

Q Mr. Golkin, what was done to dissolve what was

Golkin

39

1

2

then Golkin, Bomback & Co., Inc., a New York corporation?

3

4

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A If I remember correctly, there was a final plan of dissolution filed, but Golkin, Bomback Corporation is still not dissolved because there were certain assets and liabilities that had to be straightened out. I hope to file the final plan soon.

Q Who were the attorneys that handled the filing of the plan of dissolution and liquidation in behalf of Golkin, Bomback & Co., Inc.?

A It was either Golenbock & Barell or Ballon, Itzler & Shyman. I don't recall.

Q Are both of those law firms located in New York City?

A They are.

Q Do you know the name of the attorney who handled it for those firms?

A Seymour Kleiman, at Golenbock & Barell, and Ronald Itzler, at Ballon, Itzler & Shyman.

Q You executed, I take it, the plan of liquidation of Golkin, Bomback & Co., Inc.

A I must have.

Q Do you have a copy of the plan of liquidation?

A No, I don't.

MR. FISHER: Just a minute. There were certain

Golkin

40

1
2 papers that I did send to Mr. Hirshman, pertaining
3 to that liquidation.

4 I'm looking for copies of them here. I sent
5 them to Mr. Hirshman. I thought there were copies
6 still in the office, but I don't see copies of the
7 papers I sent to him.

8 MR. BRENNAN: Will you mark these.

9 (Three-page document, dated April 1965,
10 the first page of which is entitled "Secretary's
11 Certificate," the second page of which is en-
12 titled "Plan of Complete Liquidation and
13 Dissolution," marked Golkin Exhibit 3 for
14 identification;

15 Two-page document, entitled "Secretary's
16 Certificate," re resolution of stockholders of
17 Golkin, Bomback & Co., Inc. to adopt plan of
18 complete liquidation and dissolution, marked
19 Golkin Exhibit 4 for identification.)

20 MR. BRENNAN: Mark these, please.

21 (Copy of letter dated June 2, 1965, from
22 Golkin, Bomback & Co., Inc. to Securities and
23 Exchange Commission, marked Golkin Exhibit 5
24 for identification;

25 Letter dated June 3, 1965, from Securities

Golkin

41

and Exchange Commission to Golkin, Bomback & Co., Inc., marked Golkin Exhibit 6 for identification.)

Q Mr. Golkin, I show you what has been marked Golkin Exhibit 3 for identification, which is a three-page document produced by Mr. Fisher, captioned "Secretary's Certificate," and the second page "Plan of Complete Liquidation and Dissolution." Will you identify that document.

Is that the plan of dissolution for Golkin, Bomback & Co. that you referred to?

A I believe it is.

Q Do I understand correctly it was Mr. Kleiman who prepared that as the attorney for Golkin, Bomback & Co.?

A Correct.

Q You instructed him to file that with the appropriate authorities to commence the dissolution of Golkin, Bomback & Co.?

A Yes, I did.

Q That document is dated April 1965, Mr. Golkin; is that correct?

A Yes.

Q You made the decision sometime prior to April of

1
2 1965 to dissolve Golkin, Bomback & Co., Inc.?

3 A Yes.

4 Q Was it prior to that that you bought out Mr.
5 Bomback's interest?

6 A It was.

7 Q Do you know how long prior to that it was?

8 A No, I can't recall. I would say approximately
9 six months.

10 Q After you bought out Mr. Bomback's interest,
11 who were then the stockholders of Golkin, Bomback & Co.,
12 Inc.?

13 A I was the principal stockholder, Mr. Alfred
14 Lerner was next, Mr. Robert Gardner, George Golkin,
15 Gerald Golkin. I don't recall -- it's Herbert Shander
16 or Jimmy Burke who was on the floor. I can't recall
17 when Jimmy left and Herb came in.

18 Q Did any of these people have anything more than
19 a nominal amount of stock?

20 A Yes.

21 Q Do you recall what their stock interests were,
22 approximately?

23 A No, I can't recall.

24 I think the only one of real significance, out-
25 side of myself, was Al Lerner. Some were in the 15-, 20-

1

2

percent area.

3

Q He had 15 or 20 percent of the stock?

4

A Yes, I believe.

5

Q What percentage of the stock did you have?

6

A Around 80 -- no -- I don't recall. I can get it for you, but I don't recall.

8

Q Your recollection is somewhere between 70 and 80 percent?

10

A No, it could not have been that much.

11

MR. FISHER: Was it over 50?

12

THE WITNESS: Yes. I was always in control.

13

Q Who were the directors of the corporation after you bought out Mr. Bomback?

15

A Mr. Lerner, Mr. Gardner, myself, Mr. Golkin -- Saul Golkin, that is -- and I think that was it.

17

Probably -- again, I can't get the date straight in my mind when Jimmy Burke left the firm and Herb Shander came in.

19

20

Q Mr. Burke and Mr. Shander --

21

A They were our floor representatives and, as such, they had a three-percent interest in the firm.

22

23

Q At the time you bought out Mr. Bomback's interest were the main offices of Golkin, Bomback & Co. then at 67 Broad Street, New York?

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A Yes.

Q Was that where the principal books and records of the company were kept?

A At that time, yes.

Q Did those books and records remain there after you bought out Mr. Bomback's interest?

A Yes.

Q What subsequently happened to those books and records?

A I don't recall.

In 1969 I suffered a mishap with my leg; I was laid up for over a year. ^{from 7/1/69 to 1/1/70} Since then, First Hanover Corporation was formed, of which I was a principal stockholder, and they got themselves in difficulty with the Stock Exchange, SEC, and so forth. ¹⁹⁶⁶ Finally, I think they were taken over by Devonshire Corporation and I sold my interest out sometime in 1966.

MR. FISHER: Your interest in what?

THE WITNESS: First Hanover.

MR. FISHER: What happened to the books and records, however, of Golkin, Bomback?

THE WITNESS: I just don't know.

MR. FISHER: Were they somewhere deposited at one time with First Hanover's offices?

1 THE WITNESS: Always with First Hanover.

2
3 Elliot Gold, who then became partner in charge
4 of the back office, was supposed to look at them.
5 I just don't know.

6 Q Mr. Golkin, after you bought out Mr. Bomback's
7 interest did you continue to operate Golkin, Bomback &
8 Co. as a brokerage firm?

9 A I did, until sometime in the beginning of
10 1966, I believe, when I sold all my interest out to the
11 then stockholders, the First Hanover Corporation.

12 Q You sold all of your interest in what?

13 A All my common stock, and I agreed to leave a
14 subordinated loan and took, I think, four shares of
15 voting stock, which I redeemed at the end of one year.

16 Q I'm not quite sure I follow you, Mr. Golkin.
17 The plan of liquidation --

18 A That has nothing to do --

19 Q -- for Golkin, Bomback & Co. was prepared and
20 filed sometime in April of 1965.

21 A Right.

22 Q At any time after April of 1965 was the stock
23 that you owned in Golkin, Bomback & Co., Inc. ever trans-
24 ferred to anybody else?

25 A No.

1

2

Q Do you still own that at the present time?

3

A Right.

4

5

Q And you are still the principal stockholder
of Golkin, Bomback?

6

A Right.

7

8

Q From the time you bought out Mr. Bomback's
interest some six months before April of 1965, until
sometime in 1966, you continued to operate Golkin, Bomback
& Co. as a brokerage firm?

9

10

11

A That's right.

12

13

Q Then, in April of 1965, you decided to close
Golkin, Bomback & Co. as a brokerage firm?

14

A That's right.

15

16

MR. FISHER: The certificate of the secretary
reflects it was adopted on March 30, '65.

17

MR. BRENNAN: Thank you.

18

19

Q After March 30, 1965, what happened to the
business operations of Golkin, Bomback & Co.?

20

A After March 30th?

21

Q Yes -- 1965.

22

A It became part of First Hanover Corporation.

23

24

Q Was there a written agreement entered into
between yourself and First Hanover Corporation?

25

A Yes, there was.

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Q Do you have a copy of that agreement?

A No, I do not.

Q Did that agreement involve transferring any of the assets of Golkin, Bomback & Co. to First Hanover Corporation?

A A good part of my interest was transferred to First Hanover Corporation.

Q What do you mean by your interest?

A I owned a fair share of Golkin, Bomback stock. That was liquidated or went into dissolution. And any assets I had -- I transferred the stock-exchange seat and other assets.

Q This dissolution of Golkin, Bomback & Co., what happened to its assets, the securities it held in its name, furniture and fixtures, accounts it had, after March --

A There was a payment to me of X amount of dollars, or allowed to me, for the furniture and fixtures and depreciation, et cetera.

Q Do I understand all of the properties and assets of Golkin, Bomback & Co., or substantially all of them, were liquidated?

A That's right.

Q And then a distribution made to all the then-

1

2

existing shareholders of Golkin, Bomback?

3

A Yes, I believe so.

4

5

Q And your share of the distribution of the proceeds of Golkin, Bomback & Co. was then invested in First Hanover Corporation?

6

7

A That's right.

8

9

Q Were there any assets of Golkin, Bomback & Co., that were not liquidated in about March of 1965?

10

11

A The only assets that were not liquidated were that which could not be liquidated.

12

13

Q Included in that was the Gellman option; is that correct?

14

A That is correct.

15

16

Q Were there any of the other options or warrants described in Exhibit 1 still in existence at that time?

17

A I believe they were.

18

Q They were not liquidated either?

19

A No. I don't think they could have been.

20

21

Q I'm not arguing with you. I want the record to reflect that.

22

23

24

25

So far as you were concerned, the option agreement between Gellman Manufacturing Company and Divine & Fishman, Inc., a copy of which is attached to the complaint filed in this case, was in March of 1965, and any

1

2

assets of Golkin, Bomback & Co., Inc. --

3

A No question about it.

4

5

kept?

6

A In the file.

7

Q At your office at 67 Broad Street, New York?

8

A That's right.

9

10

Q Were all of the other papers and documents of
Divine & Fishman, Inc. which related to the Gellman Manu-
facturing deal kept in your offices at 67 Broad Street?

11

12

A The only thing I had was the option agreement.

13

Q You had no other agreements or documents?

14

A No other agreements whatsoever.

15

16

Q You had none of the documents which were pre-
pared in connection with the Gellman Manufacturing or-
ganization?

17

18

A No.

19

20

Q Did you ever have occasion to examine the
Gellman option agreement?

21

22

A Only the agreement -- in other words, the option
agreement.

23

Q When did you first see it?

24

25

A There was a whole file of agreements, and in-
cluded in that was Gellman and all the others. Just sheets

1
2 of paper which listed all the options. No other files
3 were with it.

4 Q Were each one of those options or agreements
5 kept in a separate folder?

6 A No.

7 Q They were all in one folder?

8 A Right.

9 Q Originally, those files and records were in
10 Divine & Fishman's office?

11 A In Chicago.

12 Q And at some time they were transferred to your
13 offices here in New York?

14 A I don't believe so. I never saw them.

15 Q I don't think you understand me. I'm saying
16 originally the Gellman option, the document itself, was
17 in Divine & Fishman's office in Chicago.

18 A Right.

19 Q You examined it at your offices here in New
20 York?

21 A I didn't examine anything. The only thing that
22 I had was a file --

23 THE WITNESS: Where is that option agreement?

24 (Document handed to the witness)

25 A (Continuing) This was the only thing I had in

1
2 my file (indicating).

3 Q You had the original of the Gellman option
4 agreement?

5 A No. This is the only thing that I had, option
6 agreement, period, in my file.

7 MR. FISHER: Was it a signed copy?

8 THE WITNESS: No. It was a copy similar to this.

9 Q In other words, you had a Xerox copy.

10 A Right.

11 Q You didn't have the original ribbon copy?

12 A That is correct.

13 Q And you didn't have a carbon or Xerox copy that
14 had actually been executed?

15 A I don't believe so.

16 MR. FISHER: They would normally -- unless
17 they were ill-advised -- have one original in an
18 option agreement.

19 Q The same thing was true, I take it, with the
20 other agreements.

21 A That is correct.

22 Q Those Xerox copies you had in your offices in
23 New York, when were they first delivered to your offices
24 in New York?

25 A I don't recall.

1
2 Q Sometime after you had acquired an interest
3 in Divine & Fishman?

4 A I believe so.

5 (Short recess taken)

6 Q Mr. Golkin, where are the copies of the agree-
7 ments that you have described, at the present time?

8 A I'll look in my file. I have delivered some
9 of the files back to my home. I have to look at them.

10 The original, I think, I sent to Mr. Kanton,
11 my attorney at this time.

12 Are you talking about this specific agreement?

13 Q I was talking, first of all, about all of them.

14 A I'll see if I can find them at home. There are
15 some files which I took home; it may be in those files.

16 Q These files you took home were files of Golkin,
17 Bomback & Co., Inc., the corporation?

18 A The files of Golkin, Bomback & Co., I don't
19 know what happened. I just don't know what happened to
20 them. But there were certain personal files I had in my
21 personal cabinet, in the office, which I transferred home,
22 and amongst those was the specific option agreements.

23 MR. FISHER: You are talking of the Xerox copies?

24 THE WITNESS: Yes -- whatever I had in there.

25 Q So, I take it what you are saying is, at the time

1
2 you were dissolving the business of Golkin, Bomback &
3 Co., Inc., you took this folder that had the Gellman
4 option agreement and any other option agreements or war-
5 rant agreements that were assets of Golkin, Bomback &
6 Co., Inc. and you took them home with you.

7 MR. FISHER: The Xerox copies.

8 A They were in my office at First Hanover Cor-
9 poration, and unfortunately the sheriff stopped in, I
10 ran in, got whatever I could, and the documents which I
11 took back were these copies.

12 Q You are saying there was a folder that had
13 these various option agreements of Golkin, Bomback &
14 Co., Divine & Fishman, Golkin, Divine & Fishman, and
15 when you closed the business of Golkin, Bomback & Co.
16 you took those agreements to your new offices at First
17 Hanover Corporation?

18 A They remained at First Hanover. The records
19 were supposedly to be kept by Mr. Elliot Gold, of First
20 Hanover Corporation. Where they are, I don't know.

21 Q Where was that office, at First Hanover?

22 A 67 Broad Street.

23 Q You changed the name from Golkin, Bomback & Co.,
24 Inc. to First Hanover Corporation.

25 A Yes.

1

Golkin

2

Q And the files were in the same file cabinets they had been in previous years?

3

4

A I believe so.

5

6

7

Q Then, at some time subsequent to that, you took the folders that had these agreements home. Is that what you're saying?

8

9

A Yes, I believe they are home.

10

11

Q And you did that, as I understood your testimony, just before the sheriff descended to make a levy on First Hanover Corporation.

12

13

A Correct.

14

15

16

Q As far as you were concerned, those files and records were the property of Golkin, Bomback & Co., Inc., the corporation, that was in the process of dissolution?

17

18

19

A Correct.

20

21

Q As far as you were concerned, that was the only remaining assets of Golkin, Bomback & Co.?

22

23

A As far as I can recall, yes.

24

25

Q First Hanover Corporation had no right, title or interest in those agreements whatsoever?

A Absolutely not.

Q During the time that you operated Golkin,

Bomback & Co., Inc. after buying out Mr. Bomback, did

Golkin, Bomback & Co., Inc. maintain offices in Chicago?

1

2

A Yes.

3

Q I take it you visited those offices periodically.

4

A Probably once in that six months.

5

Q That was for what purpose?

6

A To meet the manager of the office and to tell

7

him of the changes in the operation and the changes that

8

Mr. Bomback's leaving, and bring him up to date on the

9

progress or otherwise.

10

Q How would you characterize the operations of

11

Golkin, Bomback & Co. in terms of making a profit during

12

the period after you bought out Mr. Bomback and before

13

you adopted the plan of dissolution?

14

A You're asking me about figures. All I can say,

15

it must have been profitable, because we stayed in the

16

business.

17

Q But, you cannot tell me today what the profits

18

were?

19

A No.

20

Q Financial statements were periodically pre-

21

pared?

22

A Prepared by certified audits and submitted to

23

the New York Stock Exchange, and we were always in ratio.

24

Q At the time you decided to dissolve Golkin,

25

Bomback & Co., Inc. did you have the accountants prepare

1 Golkin

2 a final accounting, wrap-up accounting, so to speak, of
3 the operations of Golkin, Bomback & Co., Inc.?

4 A You're talking after I had bought Milton Bomback
5 out?

6 Q At the time of the dissolution and liquidation.

7 A I'm pretty sure it must have been done.

8 Q Do you remember who the accountants were that
9 prepared that accounting?

10 A It was either Oppenheim. Appel & Dixon or
11 Haskins.

12 Q Do you have a copy of that accounting?

13 A No.

14 MR. FISHER: I think I have the name of the
15 accountant that probably was handling it.

16 It would be Arthur Dixon, at 2 Broadway, at
17 that time, Arthur J. Dixon.

18 Q Is it your recollection they prepared the final
19 accounting of Golkin, Bomback & Co.?

20 A Yes.

21 Q From that final accounting, was a distribution
22 made to the shareholders of Golkin, Bomback & Co.?

23 A What time are we talking about? What period?

24 Q I'm talking about a final accounting that was
25 prepared of Golkin, Bomback & Co. after it ceased actively

1
2
3 doing business and before the assets were distributed to
4 the shareholders.

5 A There must have been.

6 Q Do you remember how much you received from
7 Golkin, Bomback & Co. at that time?

8 A No.

9 Q Do you have any recollection at all as to what
10 the value of it was, of your distribution?

11 A Let's say in excess of a quarter of a million
12 dollars.

13 Q At that time, Mr. Golkin--and I am referring to
14 when you were dissolving Golkin, Bomback & Co., Inc. --
15 were you aware of Mr. Albert's interest in the Gellman
16 option?

17 A You're talking about 1966 or thereabouts?

18 Q 1965. I believe March of 1965.

19 A No, I was not.

20 Q Were you aware of Mr. Heller's interest in the
21 Gellman option?

22 A No, I was not.

23 Q Has Mr. Heller received anything from the
24 Gellman option?

25 A I don't believe so.

Q Mr. Albert has?

1

2

A I never even knew there was a Mr. Heller.

3

Q But Mr. Albert has?

4

A Yes, he has.

5

6

Q When did you first become aware of Mr. Albert's interest in the Gellman option?

7

A During a phone conversation that I believe was initiated by Mr. Albert, telling me in the agreement he had he was ten-percent partner and so therefore he had a ten-percent interest, any option or anything of value that came out of Divine & Fishman.

12

Q When did that conversation take place?

13

A I would say sometime before December 1967, sometime in the latter part of '67. It was just pertaining to Amco.

16

17

Q Amco is Gellman's subsequent name, Gellman Manufacturing Company changed its name to Amco Industries?

18

A That's right.

19

20

Q When Mr. Albert called you did he recommend that you exercise the option?

21

22

23

24

25

A We discussed it, and he told me he heard that Mr. Schwartzberg was going to take a financial interest in the firm. At that time we didn't know whether Amco was going to stay in business or not. And he discussed what I was going to do. And I said I was going to sub-

1
2 scribe and I was going to take a shot, take a spec.

3 He said, "I'm entitled to ten percent."

4 And I said, "Fine and dandy; if you're en-
5 titled to ten percent, you'll have it."

6 Q Did you ask him to produce any documents that
7 indicated he was entitled to ten percent?

8 A No.

9 Q You took it just at its face value?

10 A Absolutely.

11 Q Did he ever produce to you or for your attorney
12 any documents which indicated that he was entitled to
13 ten percent?

14 A Not that I know of.

15 Q Just at his oral representation, he was granted
16 ten percent in the Gellman option?

17 A That is right.

18 MR. FISHER: Of course, you are aware of the
19 fact, in that agreement that was signed in '62,
20 there was attached, as an exhibit, understandings
21 with Albert and two other stockholders which would
22 reflect an interest in that, but you were not per-
23 sonally conscious of that when you were discussing
24 it.

25 THE WITNESS: No, I wasn't.

Golkin

60

(Short recess taken)

Q Mr. Golkin, to go back a moment to this distribution of the assets of Golkin, Bomback & Co., what records, if any, do you have in your possession now that reflect what money, property or other distribution was made to the various shareholders of Golkin, Bomback & Co., Inc. when it was dissolved?

A I can't tell you now. I can call Elliot Gold, who supposedly had all these files for me. The last time I asked him they were in the warehouse.

Q Who is Elliot Gold?

A He became partner in charge of the back office of the First Hanover Corporation.

Q The operations of First Hanover were run principally from the former offices of Golkin, Bomback & Co. at 67 Broad Street?

A That is correct.

Q Where is Elliot Gold now?

A He is liquidating First Hanover Corporation.

Q At that address?

A No. Someplace on John Street.

Q You say you have contacted Mr. Gold and he has indicated these records are in a warehouse someplace?

A I went down in the warehouse with my secretary

1
2 and I'll be damned if I could find anything. With my
3 leg, I wasn't about to go look in boxes.

4 Q Where is the warehouse where the records are
5 supposedly kept?

6 A I don't know exactly. They're downtown some-
7 place.

8 Q Are all the files and records of Golkin, Bomback
9 & Co. there?

10 A I couldn't tell you.

11 Q Mr. Gold took custody of all those files?

12 A He is supposed to have.

13 Q And he has told you he put them in that ware-
14 house?

15 A He didn't say anything. He said, "If they're not
16 there, they must be in the warehouse."

17 Q In any event, they have been removed from 67
18 Broad Street.

19 A Everything has been removed from 67 Broad
20 Street.

21 Q In the office of First Hanover Corporation, do
22 you know whether any of the records of Golkin, Bomback
23 are there?

24 A I don't know.

25 Q Have you inquired?

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A I tried to get up once and they wouldn't let me in, to see if I could find something of any interest to me personally.

Q You indicated before the sheriff arrived at First Hanover Corporation you went in and you removed certain personal files and records.

A When I heard the rumors of what was going on.

Q So the record is clear, we're talking about the bankruptcy of First Hanover Corporation; is that correct?

A Right.

Actually, First Hanover Corporation didn't go bankrupt. All the assets of First Hanover were acquired by First Devonshire Corporation and First Devonshire went bankrupt.

Q Did First Devonshire operate out of the same office, 67 Broad Street?

A Yes.

Q You were affiliated with First Hanover Corporation?

A Yes.

Q In what capacity?

A As a registered representative; employment contract.

1

2

Q Were you also a stockholder?

3

A Just for the first year. Non-voting.

4

5

Q What was the amount of your investment of non-voting stock in First Hanover?

6

A I don't recall. Very nominal.

7

Q What was the amount of subordinated loan?

8

A Over three hundred thousand.

9

Q Was any of that loan paid back by First Hanover Corporation?

11

A Not yet.

12

Q You may recover some of it in the liquidation proceedings?

13

14

A I don't think so. We may recover some of it.

15

Q Were you affiliated with First Devonshire Corporation?

16

17

A As a registered representative.

18

Q Were you a shareholder?

19

A No. Subordinated lender.

20

Q Can you fix for me, Mr. Golkin, the dates when you were affiliated with First Hanover Corporation?

21

22

A From the formation of First Hanover, which I believe was in 1966 -- I would have to get the dates -- or the middle of 1965 until the beginning of 1966. We must have liquidated Golkin, Bomback, Incorporated right

23

24

25

1
2 around the middle of 1965. Around the end of 1965 or
3 beginning of '66 we must have formed First Hanover Cor-
4 poration, and I was only with First Hanover Corporation
5 as chairman of the board for approximately six or seven
6 months and then I sold out.

7 Q During the time you were chairman of the board
8 of First Hanover Corporation were your offices at 67
9 Broad Street?

10 A Yes, they were.

11 Q You were the chief executive officer of First
12 Hanover Corporation?

13 A In name.

14 Q Why do you qualify it by "in name"?

15 A I was chief executive officer when it came
16 pertaining to my specific line of know-how: trading,
17 wire system, doing business with the institutions.

18 Elliot Gold and Al Lerner became also executive
19 officers and they took care of their end, the back
20 office, and so forth.

21 Q Your functions and business activities have
22 remained substantially the same since you were in
23 business as Golkin, Bomback & Co., partnership, prior
24 to December of 1962?

25 A Right.

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Q After you ceased being chairman of the board of First Hanover Corporation did you continue to maintain an office in the same suite at 67 Broad Street?

A I was employed.

Q By First Hanover Corporation?

A Correct.

Q And you maintained your offices there?

A Yes.

Q During that period, to your knowledge, were the files of Golkin, Bomback & Co. still in that office?

A I believe so.

Q You had never authorized them to be transferred anyplace else?

A No.

Q During that time, there were no other officers of Golkin, Bomback & Co. acting on behalf of Golkin, Bomback & Co.?

A Elliot Gold could have been, because he was with Golkin, Bomback & Company before it became First Hanover. When Milton Bomback left the firm, I hired Elliot Gold for taking care of those duties.

Q Running the back office?

A Yes. I knew nothing about that, and still don't.

Q Was Mr. Gold a shareholder of Golkin, Bomback &

1
2 Co.?

3 A I don't believe so.

4 Q Was he paid for keeping and maintaining the
5 files of Golkin, Bomback?

6 A That was his specific job.

7 Q During that period, Golkin, Bomback & Co. main-
8 tained bank accounts?

9 A Yes.

10 Q Where did they maintain the accounts?

11 A Chemical Bank, Manufacturers and Hanover and
12 Morgan Guaranty.

13 Q Do I understand correctly that, after March
14 30, 1965, when the plan of dissolution was adopted, that
15 the brokerage activities of Golkin, Bomback & Co. ceased?

16 A Yes.

17 Q And it was no longer an active brokerage firm?

18 A Correct.

19 Q Was it engaged in any other kind of business
20 during that period?

21 A Just dissolving Golkin, Bomback.

22 Q Just dissolving those assets?

23 A Correct.

24 Q And, during that period, you maintained three
25 different bank accounts?

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A Golkin, Bombback?

Q Yes.

A Just a nominal one at Chemical.

I thought you were talking about First Hanover Corporation.

Q Subsequent to March of 1965, when you dissolved Golkin, Bombback & Co., it continued to maintain a bank account?

A A special account at the Chemical Bank.

Q That was the only account it had?

A That's right.

Q What deposits were made in that account?

A No deposits. Sy Fishman sends me \$50 a month. I mean, it was a settlement of a loan, and we're finishing it up. I don't know how we arrived at it. But he owed us \$6,000, and we gave him a long-term loan of \$50 a month. That's the only money that comes in.

Q Was any money paid to anybody out of that account after the dissolution in March of 1965?

A Legal fees.

Q Anything else?

Were any employees paid?

A No.

Q When you were talking before about Mr. Gold

1
2 being paid for maintaining the records of Golkin,
3 Bomback & Co., you meant he was paid by First Hanover
4 Corporation?

5 A That is correct.

6 Q Not by Golkin, Bomback & Co.

7 A That is correct.

8 Q I take it, Mr. Golkin, there came a time when
9 you stopped maintaining an office at 67 Broad Street, in
10 the suite where you had been for quite some years prior
11 to 1962.

12 A Yes.

13 Q When was that?

14 A 1970, when the sheriff closed First Devonshire.

15 Q Up until that period, you maintained an office
16 there?

17 A Yes.

18 Q Was that the only place you had an office?

19 A That's right.

20 Q All of your personal business and everything
21 else was conducted out of that office?

22 A That is correct.

23 Q Until the sheriff closed First Devonshire Cor-
24 poration in 1970, were the records of Golkin, Bomback &
25 Co. kept in that office?

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Golkin

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A As far as I can tell you, yes.

3

Q After the sheriff closed the office, the only records you were able to salvage were the ones you took home with you?

5

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A Right.

7

I took these particular records out because they had nothing to do with First Hanover Corporation. These option agreements belonged to Golkin, Bomback, and I segregated them into a small file, which I kept in my personal file. When there was trouble brewing, I decided to go in there and take anything -- my own purchase and sales reports, which was pertinent to me personally and took them home. As far as the other records, they had to be someplace in 67 Broad Street because Milton Bomback was there at the time and he was watching them, until I bought him out prior to forming First Hanover Corporation.

19

Q Do I understand correctly, then, when you bought Mr. Bomback out in 1965, or six months before March of 1965, that after that Mr. Gold then maintained the records of Golkin, Bomback?

23

A Yes; he was supposed to.

24

Q Other than these option agreements, what other records, if any, of Golkin, Bomback & Co. did you remove

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1
2 from 67 Broad Street?

3 A I didn't remove any. They were not of any
4 consequence -- outside of my own personal files.

5 Q Your own personal files and records, Mr.
6 Golkin, your bank statements and perhaps your income-
7 tax returns, would reflect the distribution made by
8 Golkin, Bomback & Co. to you in 1965, would they not?

9 A I'm sure they would.

10 Q Do you keep a separate set of financial ac-
11 counting records for your own personal --

12 A My accountant does.

13 Q For you personally?

14 A Yes.

15 Q Mr. Golkin, what is the name of the accountant
16 who prepares your own personal tax, insurance and keeps
17 your personal books?

18 A Nathan Berkman & Company.

19 Q Where are they located?

20 A 29 Broadway, I believe.

21 Q Were income-tax returns for 1965, 1966 and 1967
22 prepared on behalf of Golkin, Bomback & Co., Inc.?

23 A Yes. Milton Bomback prepared them.

24 Q Mr. Golkin, Golkin Exhibit 2, the certificate
25 from the Secretary of State of New York, indicates that

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an amendment to the articles of incorporation of Golkin, Bomback & Co., Inc. was filed on February 1, 1965.

Do you know what that amendment was?

A I haven't the slightest idea.

Q How many options and warrants and other assets represented by these documents that you removed from 67 Broad Street were there between 1963 and 1967?

A I don't understand the question.

Q You removed a file that contained certain option agreements.

A Correct.

Q And other agreements and documents which you believed were assets of Golkin, Bomback Incorporated.

MR. FISHER: I don't think he said other agreements.

A Just the option agreements which pertained to Golkin, Divine & Fishman.

Q All option agreements?

A That is all.

Q How many were there?

A I think you have them in one of your --

MR. FISHER: Exhibit A, Schedule A.

Q You are saying the only option agreements you had were those listed on Schedule A of Exhibit A on Golkin

1
2 Deposition Exhibit 1?

3 A Yes.

4 Q Were there any others?

5 A No.

6 Q Other than the Gellman Manufacturing option,
7 have any of the other options been exercised by Golkin,
8 Bomback?

9 A I think there was 900 shares of Golf American.
10 Albert called it to my attention, and it was a very
11 nominal amount we received for that, and he got his ten-
12 percent interest. I don't recall exactly what that op-
13 tion pertained to, but we had an option to buy the stock.
14 Outside of that, we exercised none of the other options.

15 Q Just for the record, Mr. Golkin, I show you
16 what has been marked as Golkin Deposition Exhibit 4 for
17 identification, a two-page document captioned "Secre-
18 tary's Certificate." Is that a Secretary's Certificate
19 of the resolution of the stockholders of Golkin, Bomback
20 & Co. to adopt a plan of complete liquidation and dis-
21 solution for Golkin, Bomback?

22 MR. FISHER: It would certainly seem that way.

23 Q Golkin Deposition Exhibit 5 for identification
24 is a letter dated June 2, 1965, from Golkin, Bomback &
25 Co., Inc. to the Securities and Exchange Commission, which

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2 states: "Please be advised that the undersigned cor-
3 poration, Golkin, Bomback & Co., Inc., hereby requests
4 that you withdraw its registration with the Securities
5 and Exchange Commission."

6 Is that your signature at the bottom of that
7 letter?

8 A It is.

9 Q Golkin Exhibit 6 is a letter dated June 8,
10 1965, from the Securities and Exchange Commission to
11 Golkin, Bomback & Co., Inc. Is that the SEC's reply to
12 your letter of June 2, 1965?

13 A That is so.

14 MR. BRENNAN: Mark that, please.

15 (Copy of letter dated December 1967,
16 from Golkin, Bomback & Co., Inc. to Amco
17 Industries, Inc., marked Golkin Exhibit 7 for
18 identification.)

19 Q Mr. Golkin, I show you what has been marked as
20 Golkin Exhibit 7 for identification, as of this date,
21 which purports to be a letter from Golkin, Bomback & Co.,
22 Inc. to Amco Industries, Inc., dated December -- and
23 then there is no date -- 1967.

24 Can you identify that document (handing to the
25 witness)?

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A I can.

3

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Q Did you sign the original of that letter and
send it to Amco Industries?

5

A I did.

6

7

Q Do you know when in December 1967 you sent it
to Amco Industries?

8

9

A No, I don't. They must have received it before
December 31, 1967, because the option expired then.

10

11

MR. FISHER: I would say certainly before De-
cember 22, 1967.

12

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14

Q Mr. Golkin, if you will accept Mr. Fisher's
statement as to approximately when you sent it, that is
satisfactory with me.

15

A All right.

16

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Q Prior to sending the letter of December 1967,
did you hold a meeting of the board of directors of
Golkin, Bomback & Co., Inc.?

19

A No.

20

21

Q There was no formal corporate resolution adopted,
authorizing the exercise of that option, then, I take it.

22

A No formal resolution.

23

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Q Was there a meeting of the directors of Golkin,
Bomback & Co.?

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A No.

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Q Did you discuss the exercise of the option with any of the other shareholders of Golkin, Bomback & Co.?

A With all of them.

Q When did you discuss it with them?

A Sometime prior to my sending this letter out.

Q Within what period prior?

A I could have discussed it with Bob maybe three or four months prior.

Q Bob who?

A Bob Albert.

Q Mr. Albert was not a shareholder of Golkin, Bomback & Co. at that time, was he?

A No.

Q Was there a meeting with the other shareholders of Golkin, Bomback & Co.?

A There was not.

Q You went and contacted each of them individually at different times?

A Correct.

Q Within a period of what, prior to December? Three, six months?

A No. Maybe a month or two months prior.

Q Did Golkin, Bomback & Co. have funds sufficient

Golkin

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2 to exercise the option in December of 1967?

3 A It did not.

4 Q Where did the funds, the \$100,000 referred to
5 in Golkin Exhibit 7, come from?

6 A Former stockholders of Golkin, Bomback.

7 Q Did they deposit their share or their invest-
8 ment in the account of Golkin, Bomback & Co.?

9 A That is correct.

10 Q Each of them made their own individual deposit?

11 A That is correct.

12 Q Was the deposit of each shareholder in propor-
13 tion to the number of shares of stocks that each held?

14 A Yes, it was.

15 Q Do you recall how much you deposited at that
16 time?

17 A Eighteen thousand three hundred times two.

18 That would be thirt-six six.

19 Q I don't understand how --

20 A The option price was at \$2, and my option was
21 for 18,300 shares of stock.

22 MR. FISHER: Just so you'll have the numbers
23 correctly: As I understand it, the options were
24 exercised as follows --

25 MR. BRENNAN: Mr. Fisher, I appreciate your

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2 giving me that. The notice of deposition calls
3 for certain documents to be produced.

4 MR. FISHER: They're here.

5 MR. BRENNAN: Let me see them.

6 MR. FISHER: That wasn't what you asked. We
7 produced them here, but not for a discovery and
8 inspection. You've been getting whatever documents
9 we have available as you progress in your examina-
10 tion, but I'm not here to produce documents and
11 put them on the table for you. That's not what I
12 consider to be a deposition, that's what I consider
13 to be a discovery and inspection, which you do not
14 have.

15 However, I'm willing to facilitate your in-
16 quiry, if you'll tell me what documents you're
17 interested in and I'll see if we have them so you
18 can interrogate concerning them.

19 MR. BRENNAN: Just so our record is clear,
20 Mr. Fisher: The distinction you're attempting to
21 make between discovery and inspection and producing
22 the documents here is a distinction that is not
23 recognized by our District Court in Chicago. Mr.
24 Golkin is a party to that case there.

25 I'm making the demand on you in accordance with

1
2 this notice of deposition to produce for me now all
3 the documents called for in that notice of depo-
4 sition so I can examine them and inspect them now.

5 MR. FISHER: I did not understand that to be
6 the nature of your notice.

7 Whatever documents were available to Mr.
8 Golkin he has brought and they're here now.

9 MR. BRENNAN: May I see them?

10 MR. FISHER: No.

11 Q Mr. Golkin, is there a document that reflects
12 the manner in which the shares of Golkin, Bomback & Co.
13 were distributed in December of 1967, when the option
14 was exercised?

15 A Yes, there is.

16 Q Is that document here?

17 A I think so.

18 MR. FISHER: There are various documents which
19 reflect that.

20 (Documents handed to Mr. Brennan)

21 Q Mr. Golkin, you have produced seven letters in
22 response to my last request. Are there any other docu-
23 ments in your possession that in any way reflect the
24 number of shares of common stock of Golkin, Bomback &
25 Co., held by individuals as of December 1967?

1
2 MR. FISHER: There is this letter that you
3 distributed among various stockholders (handing
4 to the witness).

5 This is a form of letter sent to the various
6 persons indicated in that letter. It is dated
7 November 28, 1967.

8 (Batch of seven letters marked Golkin
9 Exhibits 8 through 14 for identification.)

10 MR. BRENNAN: Mark that as the next exhibit.

11 (Photocopy of letter dated November 29, 1967,
12 from Golkin, Bomback & Co., Inc. to Saul Golkin,
13 marked Golkin Exhibit 15 for identification.)

14 Q Mr. Golkin, are there any other documents that
15 reflect either an invitation or request to --

16 A I don't believe so, no.

17 Q Mr. Golkin, I show you what has been marked as
18 Golkin Exhibit 15 for identification, which purports to
19 be a letter, Xerox copy of letter, dated November 28,
20 1967, from Mr. Saul Golkin, Golkin, Bomback & Co., Inc.,
21 to Saul Golkin (handing to the witness).

22 Can you identify that letter that you have
23 apparently written to yourself?

24 A Yes.

25 Q Did you send the original of that letter to

1
2 yourself, Mr. Golkin?

3 A Yes.

4 Q The signature at the bottom is just merely
5 "Saul Golkin."

6 A Right.

7 Q It's on a Golkin, Bomback & Co., Inc. letter-
8 head.

9 A Yes.

10 Q In what capacity were you writing on behalf of
11 Golkin, Bomback & Co., Inc., in November of 1967?

12 A Controlling stockholder at the time of 1967,
13 or when Golkin, Bomback went into dissolution, con-
14 trolling stockholder of Golkin, Bomback, Incorporated.

15 Q You were still an officer?

16 A That's right.

17 Q Were you chairman of the board, and president?

18 A I don't actually recall what my title at that
19 particular time was because the firm was in dissolution.

20 Q In any event, you were the last active chief
21 executive officer of the company?

22 A Right.

23 Q And you individually controlled the board of
24 directors of the company, both in 1965 and in 1967?

25 MR. FISHER: Controlled the election of the

1
2 board.

3 MR. BRENNAN: Yes.

4 A Yes.

5 Q Was a letter similar to Exhibit 15 sent to the
6 other stockholders of Golkin, Bomback & Co., Inc.?

7 MR. FISHER: It was sent, apparently, to all
8 other persons mentioned on page 2, the first full
9 paragraph of that exhibit.

10 Q Do you adopt that, Mr. Golkin, as your answer?

11 A Yes.

12 Q This indicates the name Robert Albert, and
13 5,000 after that. What does the 5,000 refer to?

14 A Five thousand shares of stock.

15 Q Is that 5,000 shares of Amco stock that he is
16 exercising an option on?

17 A That is correct. He was asked if he wanted to.

18 Q He was invited to exercise an option to that
19 extent?

20 A That is correct.

21 Q He was not, however, a shareholder of Golkin,
22 Bomback?

23 A No, he was not.

24 Q He was asked to exercise it pursuant to his
25 agreement with Divine & Fishman?

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A I knew nothing about that agreement.

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Q How was it that you asked him to exercise an option for 5,000 shares of the Amco stock?

5

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A In my discussion with Bob Albert, he said he was entitled to it. I didn't want to argue with him. I didn't ask for papers. I was very happy to spread the risk.

9

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Q There is also listed Golkin, Bomback & Co., Inc., 2,500 shares.

11

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Who was going to put up the money for the portion of the option that was to be allocated to Golkin, Bomback & Co., Inc.?

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A I believe Golkin, Bomback had \$5,000, but since that letter went out and these letters subsequently went out, we made a deal with Mr. Kanton, our attorney, in lieu of cash, he agreed -- and I think we arrived at a certain amount -- take that amount away from Golkin, Bomback and you'll find out Mr. Kanton received an option to purchase that in lieu of legal fee.

21

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Q At the time this letter was sent out in November of 1967, Mr. Golkin, what was your intention with respect to Golkin, Bomback & Co. acquiring 2,500 shares of the Amco stock?

25

A I would have paid \$5,000.

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Q You, yourself?

3

4

A I don't recall whether we had \$5,000 in the Golkin, Bomback account, but I would have made a loan.

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Q All the other individuals -- Milton J. Bomback, Saul Golkin, Samuel Weiss, George Golkin, James Burke and Gerald Golkin -- were they all shareholders of Golkin, Bomback & Co. in November of 1967?

9

10

11

A Robert Albert was not, Milton Bomback was not, Saul Golkin was, Samuel Weiss was, George Golkin was, James Burke was, Gerald Golkin was.

12

13

14

Q As of November 1967, what was the total number of outstanding and issued shares of stock in Golkin, Bomback & Co., Inc.?

15

16

17

A I don't recall.

Q Do you have any records here that would indicate that?

18

19

20

A I do not.

MR. FISHER: This stock book only goes as far as 1964. That's the only one that was produced for us.

21

22

THE WITNESS: I've asked Mr. Kleiman to produce all the documents, and this is what he sent.

23

24

Q In November of 1967, Mr. Golkin, how many shares of stock in Golkin, Bomback & Co., Inc. did you own?

25

A I think I owned 88 percent of the stock. I don't

1
2 know what the capitalization was at the time. It was
3 unimportant; Golkin, Bomback was in dissolution.

4 Q Does the number of shares reflected after the
5 persons listed in this second paragraph on page 2 of the
6 letter of November 28, 1967 reflect the number of shares,
7 or the ratio of number of shares, that these shareholders
8 held in Golkin, Bomback & Co., Inc.?

9 A Very closely, I believe.

10 MR. FISHER: Except I do call your attention
11 to the fact he said Mr. Bomback was no longer a
12 stockholder but he had the same former interest.

13 THE WITNESS: He still had an interest in the
14 option.

15 MR. FISHER: That is as I understand it.

16 Do you want me to cancel that statement and
17 strike it from the record?

18 MR. BRENNAN: Off the record.

19 (Discussion off the record)

20 Q Mr. Golkin, I assume you adopt what Mr. Fisher
21 says as your testimony.

22 MR. FISHER: Is it correct?

23 A Yes.

24 Q Mr. Golkin, I show you what has been marked as
25 Golkin Exhibits 8, 9, 10, 11, 12, 13 and 14 for identi-

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2 fication, all of which purport to be letters addressed
3 to Golkin, Bomback & Co., Inc. from seven different
4 persons.

5 Were these the responses you received to your
6 letter of November 28, 1967?

7 A I believe they were -- if they add up to 50,000
8 shares of stock.

9 MR. FISHER: If my arithmetic is correct, they
10 add up to 50,000.

11 MR. : Mr. Fisher tells us he has added
12 up the shares in each of the letters and they add
13 up to 50,000.

14 Q Did each of the persons who sent you a letter,
15 which is included in Exhibits 8 through 14, then deposit
16 the amount indicated in their respective letter in
17 Golkin, Bomback & Co.'s checking account?

18 A They made a check out and I deposited it in
19 the Chemical Bank.

20 Q Was a letter similar to your letter of November
21 28, 1967, Exhibit 15, sent to John Coleman?

22 A No.

23 Q Was any letter sent to John Coleman?

24 A No.

25 Q Did you contact him in any way, shape or form

1

2

about the option?

3

A No.

4

MR. FISHER: Personally.

5

THE WITNESS: Personally.

6

Q Did you direct anybody else to contact him?

7

A Yes, I did.

8

Q Whom did you direct to contact him?

9

A Bob Albert.

10

Q When did you direct Mr. Albert to contact him?

11

A When we were discussing his 5,000 shares of

12

stock, he said he believed John Coleman had an interest,

13

and asked him if he would do me a favor and if he would

14

contact Mr. Coleman to see if he had an interest in sub-

15

scribing the stock, and he called me back and he said

16

Mr. Coleman had no interest.

17

Q When was this first conversation with Mr.

18

Albert about his 5,000 shares in Amco stock?

19

A Sometime prior to December 1967, or prior to

20

November 1967, when he sent me his check.

21

Q Can you fix the date more closely in relation

22

to this November 28, 1967 date?

23

A Within a month or two months prior to that, I

24

would say.

25

Q That's as close as you can fix it?

1

2

A Yes.

3

Q Was it just one telephone conversation?

4

A No; we had several telephone conversations.

5

6

Q During this two-month period prior to November 28, 1967?

7

A Right -- before I decided we were going ahead.

8

9

Q In how many of these telephone conversations did you discuss John Coleman's interest in the Amco option?

10

11

A I believe only once.

12

13

Q Do you recall in which telephone conversation you discussed it?

14

A I do not.

15

16

Q Your recollection is quite clear that Mr. Albert told you that he thought Mr. Coleman had an interest in the Gellman option?

17

18

A I definitely recall that.

19

Q What did you say to him then?

20

21

A I said, "Please contact Mr. Coleman; and if he does have it, let me know and we'll see what happens."

22

23

Q Did you subsequently talk with Mr. Albert on the telephone again?

24

25

A Yes. And he told me specifically Mr. Coleman had no interest.

1

2

Q Did he tell you when he contacted Mr. Coleman?

3

A No. Right around that time.

4

5

Q Were you personally aware, at any time prior to your telephone conversation with Mr. Albert, when he told you that Mr. Coleman had an interest, that Mr.

6

7

Coleman had claimed to have an interest in it?

8

9

MR. FISHER: He said that Mr. Albert said he

might have an interest.

10

A No.

11

12

13

Q Your telephone conversation with Mr. Albert, when he told you that Mr. Coleman might have an interest, occurred in September or October or November of 1967?

14

A I believe that is correct.

15

16

Q You were then maintaining your office at 67 Broad Street?

17

A Yes.

18

19

Q And all the files and records of Golkin, Bomback & Co. were there at the time?

20

A I believe they were.

21

22

23

24

Q After Mr. Albert told you that he thought Mr. Coleman had an interest, did you or did you cause anyone to make an inspection of the files and records of Golkin, Bomback & Co. to determine if Mr. Coleman had an interest?

25

A I did not.

1

2

Q You did not, yourself?

3

A I did not have anyone do it or do it myself.

4

Q Did you ever subsequently have anybody make an

5

inspection to see if Mr. Coleman had an agreement with

6

Divine & Fishman?

7

A No.

8

Q Did you know Mr. Coleman?

9

A No.

10

Q You had never met him prior?

11

A I may have met him once, on my only one trip

12

to Chicago, to Sy Fishman. I don't recall. He intro-

13

duced me to several people, but he was no longer with

14

the firm.

15

Q Did you, or did you have anyone else on your

16

behalf, contact Mr. Coleman?

17

A No.

18

Q You sent him nothing in writing?

19

A Nothing.

20

Q You made no effort to call him on the tele-

21

phone?

22

A No.

23

Q Do I understand, Mr. Golkin, there were just

24

the two telephone conversations with Mr. Albert about

25

Mr. Coleman's interest?

1

2

A No. I had a number.

3

MR. FISHER: Only about Mr. Coleman.

4

Q My question is whether you had only two tele-

5

phone conversations with Mr. Albert about Mr. Coleman's

6

interest.

7

A Yes. One in which he told me he believed he

8

had an interest and the other one in which I was given

9

to understand that Mr. Coleman had no interest.

10

Q And prior to the exercise of the option, those

11

were the only conversations you had with Mr. Albert about

12

Mr. Coleman's interest?

13

A Right.

14

Q Subsequent to the exercise of the option did

15

you discuss Mr. Coleman's interest with Mr. Albert?

16

A After I received a phone call from Mr. Berman,

17

asking me do I know anything about Mr. Coleman's interest

18

in the Amco situation.

19

MR. FISHER: That was in 1971?

20

THE WITNESS: Yes.

21

Q Sometime in 1971 Mr. Berman called you?

22

A Right.

23

And I said I had no idea, no recollection that

24

he had an interest and, if I remembered correctly, I spoke

25

to Mr. Albert and I understood he had no interest.

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Q Mr. Golkin, are you saying that when Mr. Albert reported back to you he said that Mr. Coleman had no interest in the Gellman option in the sense that he had no legal right to any part of the Gellman option?

A No. He did not want to send in his \$5,000 -- whatever it was -- money for his percentage.

MR. FISHER: It was \$10,000.

THE WITNESS: Ten thousand dollars, right.

Q So, Mr. Albert's report back was he didn't want to make the investment and he didn't want to come up with the money?

A That is right.

Q When Mr. Berman called you in 1971, on whose behalf was he calling?

A On his own behalf, I believe.

Q Subsequent to that, did you discuss Mr. Coleman's interest in the Gellman option with Mr. Albert?

A Yes. I tried to refresh his memory about the conversation I had with him and he specifically told me Mr. Coleman had no interest in sending me a check for \$10,000.

Q That was in a telephone conversation you had with him?

A Yes.

1
2 Q When did that telephone conversation take
3 place?

4 A 1967.

5 Q The more recent one.

6 A One I had with him after Mr. Berman called me
7 and asked me how does Mr. Coleman fit into the situation
8 now, and I explained to him my conversation, but I was
9 sort of shaken at the time. Then I called Mr. Albert
10 and asked him about it, and I said, "Don't you recollect
11 this?" And he said, "Yes, vaguely I recollection- HCL
12 something about it."

13 Then I heard he was going down for a deposition
14 and called him and tried to refresh his memory, and at
15 that particular time he said, "I remember nothing."

16 Q Mr. Golkin, you say the second time you spoke
17 with Mr. Albert in 1971 he told you he had no recollec-
18 tion.

19 A That is true.

20 Q Can you be more specific than that? He had no
21 recollection about what?

22 A About any conversation with Mr. Coleman.

23 Q With Mr. Coleman.

24 A Yes.

25 Q Did he say that he had no recollection of any

1
2 kind of any conversation about Mr. Coleman with you in
3 1967?

4 A Words to that effect.

5 Q Mr. Golkin, I take it that the letter of
6 November 28, 1967, Exhibit 15, was prepared for you by
7 your attorneys. Is that correct?

8 A That is correct.

9 Q Who were your attorneys at that time?

10 A At that time, Bernard S. Kanton.

11 Q What firm was he with?

12 A He practiced by himself.

13 Q Does he still practice in New York?

14 A Yes.

15 Q Had he represented you prior to November 1967?

16 A He was.

17 Q For how long?

18 A About a year.

19 Q And in July of 1967 did he make an effort to
20 obtain a no-action letter from the SEC?

21 A He did. He tried to obtain it but he was un-
22 successful. I don't know exactly --

23 Q Do you have a copy of his request for a no-action
24 letter?

25 A No. He probably has it in his file.

1

2

Q You don't have it here?

3

A No. Anything I have is there.

4

5

Q I understand that. But Mr. Fisher is still refusing to produce it, in spite of my demand.

6

7

8

9

10

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MR. FISHER: I haven't got a copy of a letter that Mr. Kanton wrote to the SEC. I don't know that he ever wrote to the SEC. He appears to have written an opinion to Golkin, Bomback & Co., Inc. respecting this option and shares, but not a letter to the SEC.

MR. BRENNAN: Mr. Fisher, I have in my possession a document which has been marked previously in this case as Berman Deposition Exhibit 7 for identification, which purports to be, and is identified by Mr. Berman as, a copy of a letter from John J. Sullivan of Manes, Sturim, Roth & Fisher, dated December --

MR. FISHER: You were talking about July 1967.

MR. BRENNAN: -- wherein he states to the SEC: "Applications to your office for no-action letters were forwarded on July 6, 1967 and May 23, 1970."

I would like to see those applications referred to in this letter of December 31, 1970.

MR. FISHER: There may very well be such things.

Golkin

They're certainly not in this file.

(Discussion off the record)

MR. BRENNAN: Will you mark this.

(Copy of letter dated December 31, 1970,
from Manes, Sturim, Roth & Fisher to Division
of Corporation Finance, Securities and Exchange
Commission, marked Golkin Exhibit 16 for iden-
tification;

Copy of letter from Manes, Sturim, Roth
& Fisher to Amco Industries marked Golkin
Exhibit 17 for identification;

Copy of letter dated February 9, 1971,
from Securities and Exchange Commission to
John J. Sullivan, Esq., of Manes, Sturim, Roth
& Fisher, marked Golkin Exhibit 18 for iden-
tification.)

Q Mr. Golkin, in any event, in December of 1967
the Amco option was exercised?

A Right.

MR. BRENNAN: Will you mark these.

(Copy of letter from Bernard S. Kanton
to Division of Corporation Finance, Securities
and Exchange Commission, dated March 23, 1970,
marked Golkin Exhibit 19 for identification;

1
2
3 Copy of letter dated August 4, 1967,
4 from Securities and Exchange Commission to
5 Bernard S. Kanton, marked Golkin Exhibit 20
6 for identification;

7 Copy of letter dated April 14, 1970,
8 from Securities and Exchange Commission to
9 Bernard S. Kanton, marked Golkin Exhibit 21
10 for identification.)

11 Q Mr. Golkin, Exhibits 8 through 14, if I under-
12 stood your prior testimony correctly, represent the
13 number of shares and the amounts put up by various in-
14 dividuals to exercise the Amco option. Is that cor-
15 rect?

16 A Will you repeat that.

17 (The reporter read the question)

18 A (Continuing) That is correct.

19 Q The number of shares and the amounts put up by
20 the various persons represented in Exhibits 8 through 14
21 varies from the recitation of the interest of the various
22 parties as contained in the second paragraph of page 2
23 of Exhibit 15 of the letter of November 28, 1967.

24 A That is correct.

25 Q In the letter of November 28, 1967, you are
listed as having 18,700 shares. In fact, according to

1

2

Exhibit 10, you only subscribed, so to speak, to 18,300

3

shares.

4

A Correct.

5

Q Why the difference?

6

A Mr. Bomback and myself agreed, in lieu of a

7

legal fee to Bernie Kanton, he said he would like to

8

take an option on stock in lieu of the fee, to give up

9

some of our stock to him, which he paid for.

10

I think, if you add that all up, it still

11

amounts to 50,000 shares of stock. All the other stock

12

holders got their percentage allotment.

13

Q Your number of shares were reduced from 18,700

14

to 18,300, as were Mr. Bomback's?

15

A Right.

16

Q For a total of 800 shares transferred to Mr.

17

Kanton by you and Mr. Bomback.

18

A Right.

19

Q Exhibit 9, Mr. Kanton's letter, indicates that

20

he has been offered the right to purchase 3,750 shares.

21

A Twenty-five hundred shares that Bomback was

22

going to subscribe to we gave to Mr. Kanton. Samuel

23

Weiss did not wish to subscribe to his and gave him that.

24

And I think Jimmy Burke didn't wish to subscribe.

25

If you add them all together -- this is the way

1
2 we arrived at the figure.

3 Q At the time the Amco option was exercised, in
4 December of 1967, do you know what Amco was selling for
5 on the Exchange at that time?

6 A Around three.

7 Q And the option price was \$2?

8 A That is correct.

9 MR. FISHER: However, \$3 was freely traded
10 stock price.

11 Q The stock you had was restricted and the option
12 was exercised with a stock certificate --

13 A With the proper legend.

14 Q Who kept the stock certificate when it was
15 issued?

16 A I did, at my personal vault.

17 Q At your own personal bank?

18 A That's right.

19 Q How long did you keep it there?

20 A Since I received the ticket, December 1967.

21 Q Until when?

22 A Until I sent it in to transfer, or brought it
23 out to Chicago for transfer.

24 Q In 1971?

25 A Right.

1
2 Q Between the time you received the stock cer-
3 tificate and the time you brought it out to Chicago for
transfer, did you send any documents to any of the per-
5 sons identified in Exhibits 8 through 14?

6 A No.

7 Q Mr. Golkin, I show you what has been marked
8 Exhibit 19 for identification, which purports to be a
9 letter dated March 23, 1970, from Bernard S. Kanton to
10 the Securities and Exchange Commission in Washington,
11 D.C. Was that letter sent on behalf of Golkin, Bomback
12 & Co., Inc.?

13 A Yes.

14 Q Was it for the purpose of having the "re-
15 stricted" legend removed from the stock certificate?

16 A Yes.

17 Q Was that the first time that an attorney on
18 your behalf attempted to have the restriction removed from
19 the stock certificate?

20 A No. I think there was one right after 1967,
21 when Mr. Kanton took the view, if I remember correctly,
22 that inasmuch as Golkin, Bomback had the option for more
23 than three years, in his opinion, it would be so.

24 Q Is it your understanding sometime in 1967 --

25 A Probably in '68.

1
2 MR. FISHER: It was more like July '67.

3 A (Continuing) I don't recall, but I think there
4 were two letters: one asking for lifting of the re-
5 striction, in view of the fact that we had the option for
6 more than three years, or something like that, and then
7 this one.

8 MR. FISHER: He appears to have written July
9 6, 1967.

10 Q Mr. Golkin, I show you what has been marked as
11 Exhibit 21 for identification, which is a letter from
12 the Securities and Exchange Commission to Bernard S.
13 Kanton, in New York; it bears the stamped date of March
14 14, 1970; however, the abbreviation "Mar." is crossed
15 out and, in pencil, "April" is written above that.

16 Is it your understanding that was the SEC's
17 response to Mr. Kanton's letter of March 23, 1970?

18 A Yes.

19 Q I show you what has been marked as Exhibit 20
20 for identification, a letter from the Securities and
21 Exchange Commission, dated August 4, 1967, to Mr. Kanton,
22 which purports to be in reply to his letter of July 6,
23 1967, concerning the proposed sale of 50,000 shares of
24 Amco stock.

25 Was that the SEC's reply to his first effort to

1
2 have the restriction removed?

3 A Yes.

4 Q I show you what has been marked Exhibit 16 for
5 identification, which purports to be a letter dated
6 December 31, 1970, to the SEC from Manes, Sturim, Roth
7 & Fisher, and ask you whether or not that letter was
8 sent by your attorneys to have the restriction removed.

9 A Correct.

10 Q I show you what has been marked as Golkin
11 Exhibit 18 for identification, letter from the SEC,
12 dated February 9, 1971, to Mr. Sullivan at Manes,
13 Sturim. Is it your understanding that's the SEC's re-
14 ply to Mr. Sullivan's letter of December 31, 1970?

15 A It is.

16 Q That letter authorizes the removal of the re-
17 striction from the stock certificate?

18 A That is correct.

19 Q Am I correct, Mr. Golkin, that until that let-
20 ter of February 9, 1971, Golkin Exhibit 18 for identifi-
21 cation, was obtained from the SEC, Golkin, Bomback & Co.,
22 Inc. could not sell the 50,000 shares of stock in Amco
23 Industries that it held?

24 A To the public.

25 MR. FISHER: For public distribution; but there

1 Golkin

2 are other exceptions that are applicable at all
3 times.

4 Q In other words, that stock certificate for
5 50,000 shares of Amco could not be traded in the regular
6 stock market.

7 A That is correct.

8 Q Any transfer or sale of the stock prior to
9 receipt of the letter of February 9, 1971 would have to
10 be pursuant to some exception in the securities law or
11 some private sale that was allowed by the securities law.

12 A Yes.

13 Q I show you what has been marked Golkin Exhibit
14 17 for identification, which purports to be a letter
15 dated February 11, 1971, from Mr. Murray Roth of Manes,
16 Sturim to Amco Industries, and ask you whether or not
17 you have seen that letter or a copy of that letter pre-
18 viously.

19 A Yes.

20 Q Was that sent at your direction to Amco In-
21 dustries?

22 A Yes.

23 Q Am I correct, Mr. Golkin, that in February of
24 1971 decision was made to sell the 50,000 shares of Amco
25 stock after the SEC authorized the removal of the re-

1

2

strictive language from the certificate?

3

A Yes, we decided to sell it.

4

5

Q I take it, Mr. Golkin, you made the decision to sell the Amco stock.

6

A We all made the decision.

7

Q When you say "we all," who participated?

8

A All the participants.

9

10

Q Was their consent and agreement to sell the Amco stock evidenced in writing?

11

A No.

12

13

Q Was there a meeting of all of the persons who had an interest --

14

A Personal meeting, no.

15

16

Q Did you contact each of the persons who had put up the money to buy the Amco stock?

17

A I certainly did.

18

Q Did they unanimously concur in its sale?

19

A Unanimously.

20

Q At what price was the Amco sold for?

21

A About eighteen.

22

Q Through what brokerage firm was it sold?

23

A Axelrod and Company.

24

Q Do you have the records of the sale of the stock?

25

A I can get them.

1

2

Q You don't have them here now?

3

A No.

4

5

Q What was done with the proceeds from the sale
of the stock?

6

A Each individual got his own.

7

8

Q Were the proceeds from the sale of the stock
deposited in the Golkin, Bomback & Co. checking account?

9

10

A All the stock was sold out for each individual's
account and then Axelrod forwarded a check for the pro-
ceeds of the sale.

12

13

Q Was the Amco stock sold in one or several
lots?

14

A Several lots.

15

16

Q Did Axelrod attend to dividing up the interests
of the individuals who were entitled to receive the pro-
ceeds?

17

18

A Right.

19

20

Q Before doing that, I assume Axelrod received
something in writing indicating how it should be dis-
tributed and to whom.

21

22

A No.

23

Q How did they know how to --

24

25

A I entered the order. I was with Axelrod and
Company.

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2

3

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Q When you entered the order, then, you indicated how the proceeds should be distributed?

A I tried to distribute it as evenly as possible, but the big bulk was sold at 18. There was four or five thousand shares sold prior. Someone sold it at 19. I think Bob Albert got some and I got some, and we were trying to distribute it as equally as we possibly could.

Q I understand that, Mr. Golkin, and you have told me the records which would indicate exactly how the stock was distributed are available and you have access to them and you can produce them.

A Yes, I can.

Q At some point and time has the Golkin, Bomback & Co. bank account at the Chemical Bank been closed?

A No.

Q It is still open?

A Still open.

Q What is in it at the present time?

A Two or three thousand dollars.

Q Are there any unpaid debts or obligations of Golkin, Bomback & Co.?

A No, not that I know of.

Q During the time that you held the Golkin, Bomback

1
2 & Co. Amco Industries stock did you ever use it as
3 collateral?

4 A Never.

5 Q Has Golkin, Bomback & Co., Inc. filed tax re-
6 turns in the last five years?

7 A Yes. Mr. Bomback filed returns for '66, '67
8 and '68.

9 Q What about after that?

10 A No.

11 Q As far as you know, '68 was the last a return
12 has been filed?

13 A Yes.

14 Q In December of 1970, who were the officers of
15 Golkin, Bomback & Co., Inc.?

16 A The same officers that were there when we
17 voted the dissolution. No change.

18 Q Does Golkin, Bomback & Co. have seats on any
19 exchanges at the present time?

20 A Golkin, Bomback & Co., as such, has about two,
21 three thousand dollars in the bank.

22 Q The options --

23 A The options have expired; they're worthless.

24 Except \$50 a month, which we receive from Mr.

25 Fishman.

1
2 Q Axelrod and Company has an office in Chicago,
3 does it not?

4 A It does not.

5 Q Did it?

6 A Never.

7 MR. BRENNAN: Mr. Fisher, at this time I again
8 ask you to produce all of the documents called for
9 in the notice of deposition for such inspection as I
10 may choose to make at this time.

11 MR. FISHER: I don't think your notice includes
12 that.

13 MR. BRENNAN: Just so the record is clear: You
14 have with you, in the deposition room, all of the
15 documents that were in Mr. Golkin's possession or
16 he had access to, called for by the notice?

17 MR. FISHER: To the best of my knowledge, and
18 which include three minute books, which I did let
19 you see.

20 MR. BRENNAN: I want the record to reflect you
21 interrupted my examination of the minute books.

22 MR. FISHER: Then I permitted you to resume it.

23 It is two minute books, really, and two stock
24 books, both of which you were at liberty to see, one
25 of which you did actually examine.

1
2 The additional material that I have here,
3 which I have awaited submission to you in the event
4 that you interrogated concerning it, is very limited
5 in nature. There are a few irrelevant, I think,
6 letters which have, really, nothing to do with this
7 case whatsoever, that I see in the file; there is
8 a correspondence between Arvey, Hodes and Bernard
9 S. Kanton, relative to registration of the common
10 shares underlying the option.

11 If you want to ask questions concerning that,
12 you may.

13 MR. BRENNAN: Mr. Fisher, it is quite obvious
14 I can't ask questions concerning them until I see
15 the documents.

16 MR. FISHER: When a court advises us that a
17 notice to produce, in your court, constitutes a
18 discovery and inspection, then I feel I can afford
19 you that opportunity. At this moment, I'll have to
20 go under the assumption that my understanding of the
21 law is appropriate to the situation.

22 MR. BRENNAN: So that you are not going to
23 allow me to inspect the documents?

24 MR. FISHER: I will not allow you to inspect,
25 at this moment, the correspondence between Messrs.

1
2 Kanton and Arvey, Hodes and Montynband, pertaining
3 to registration, which constitutes the only other
4 material I have here.

5 MR. BRENNAN: You have a large folder that you
6 say is --

7 MR. FISHER: A large folder, but a good deal
8 of it consists of some very thick pieces of paper
9 constituting your complaint and other matters of
10 that nature. One of the most imposing documents is
11 a deposition, a copy of a deposition you took in
12 Chicago, of Robert Albert. I have the notice of
13 deposition, which also constitutes an imposing
14 document. I have a letter from Winston, Strawn,
15 a copy of which I am sure you have, making a de-
16 mand; and more copies of notice of deposition, more
17 copies of complaint, more copies of complaint, more
18 copies of notice of deposition, all of which fill up
19 this folder.

20 I have also an annual report of Amco Industries
21 for the year 1970. I don't know what relevancy that
22 has to this particular case, but I have it here. I
23 have copies of a lot of the materials that you have
24 already seen.

25 You will notice this folder gets thinner and

Golkin

1

2

thinner as I draw out these massive documents I

3

have just averted to.

4

5

6

MR. BRENNAN: Mr. Fisher, do you have in your possession any documents called for in the notice of deposition that I have not seen?

7

MR. FISHER: Yes.

8

MR. BRENNAN: I want to see them now.

9

10

11

12

MR. FISHER: The documents you have not seen are the correspondence between the Arvey firm and Kanton, concerning the registration of the stock. That you have not seen.

13

14

15

I also have in my folder letters that I wrote to our corresponding counsel, Sonnenshein, Levinson, and I don't intend to show that to you.

16

17

18

Q Did you receive correspondence from Mr. Marshall Berman relating to Mr. Coleman's interest in the Gellman option?

19

A Not that I recall.

20

21

22

23

24

25

Q In his deposition, he had exchanged certain correspondence between himself and you and Golkin, Bomback & Co., Inc., copies of which he refused to produce on the ground you might contend it was subject to an attorney-client privilege.

Do you make assertion it is a privileged

1
2 communication?

3 MR. FISHER: Until such time as we see it, we
4 would not be in a position to judge. Right at
5 this moment, you don't have any copies. I wouldn't
6 know.

7 MR. BRENNAN: (To witness) Do you want to re-
8 spond to my question?

9 MR. FISHER: Under advice of counsel, I would
10 say you should assert that at this time, without
11 knowing the nature of the correspondence.

12 Q In any event, you don't have it in your pos-
13 session?

14 A No, I do not.

15 Q Would it be with the other files and records
16 of Golkin, Bomback & Co.?

17 A I have no idea.

18 MR. FISHER: Off the record.

19 (Discussion off the record)

20 Q Mr. Golkin, have you produced your copy of the
21 option agreement between Gellman Manufacturing and --

22 A I don't have a copy. I believe Mr. Kanton has
23 it. I originally had one, and I believe Mr. Kanton had
24 it when he dictated the letter exercising the option.

25 Q You have not produced any financial books and

1
2 records of yours today.

3 A No.

4 Q You have not produced your tax returns.

5 A No..

6 MR. FISHER: The tax returns we would have
7 objected to producing.

8 The financial documents, you said, were not
9 in your possession.

10 THE WITNESS: I don't have them.

11 Q Your accountant has them?

12 A Which financial --

13 Q Your personal.

14 MR. FISHER: We would have refused to produce
15 those, had they been in his possession.

16 Q Mr. Golkin, in an affidavit filed in this case,
17 an affidavit of yours filed in this case, it is stated
18 that you are not in a precarious financial position.

19 Can you tell me approximately what your personal
20 net worth is at the present time?

21 MR. FISHER: I don't believe that is a relevant
22 question for your current inquiry.

23 MR. BRENNAN: Are you instructing him not to
24 answer?

25 MR. FISHER: I am instructing him not to answer.

1
2 If the Court thinks it is relevant on a ques-
3 tion of venue and jurisdiction, that is another
4 matter.

5 MR. BRENNAN: Let the record show I have no
6 further questions of Mr. Golkin at this time. I
7 am continuing the deposition until such time as
8 the production of documents which are in dispute
9 is resolved by the Court.

10 MR. FISHER: You are at liberty to ask ques-
11 tions concerning the one set of documents I told
12 you are here.

13 MR. BRENNAN: Thank you.

14 MR. FISHER: I am making a note of the fact
15 that you had the opportunity to do so.

16 MR. BRENNAN: Let the record show that Mr.
17 Fisher and I have stipulated, and Mr. Golkin has
18 agreed, the requirement of filing the original
19 transcript at this time is waived, signature is not
20 waived.

21 Mr. Fisher, I assume you will see to it that
22 Mr. Golkin signs this.

23 MR. FISHER: As soon as it is delivered to

24 (Continued next page)
25

A 0223

Golkin

113-a

our office and assuming Mr. Golkin's survival.

Subscribed and sworn to before me

this ____ day of _____ 1971

1

2

Witness

3

SAUL GOLKIN

4

5

EXHIBITS

6

Golkin
for Id.Page

7

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1

Photocopy of agreement between
Saul Golkin, Milton Bomback,
George Golkin and Divine &
Fishman, Inc.

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Certificate of incorporation,
issued by Department of State,
State of New York

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Three-page document, dated April
1965, the first page of which
is entitled "Secretary's Cer-
tificate," the second page of
which is entitled "Plan of Com-
plete Liquidation and Dissolu-
tion"

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Two-page document, entitled
"Secretary's Certificate," re
resolution of stockholders of
Golkin, Bomback & Co., Inc. to
adopt plan of complete liquida-
tion and dissolution

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Copy of letter dated June 2, 1965,
from Golkin, Bomback & Co., Inc.
to Securities and Exchange Com-
mission

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23

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Letter dated June 8, 1965, from
Securities and Exchange Commission
to Golkin, Bomback & Co., Inc.

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EXHIBITS (Continued)

	<u>Golkin for Id.</u>		<u>Page</u>
1			
2			
3			
4			
5	7	Copy of letter dated December 1967, from Golkin, Bomback & Co., Inc. to Amco Industries, Inc.	73
6			
7			
8	8 thru 14	Batch of seven letters	79
9	15	Photocopy of letter dated November 29, 1967, from Golkin, Bomback & Co., Inc. to Saul Golkin	79
10			
11			
12	16	Copy of letter dated December 31, 1970, from Manes, Sturim, Roth & Fisher to Division of Corporation Finance, Securities and Exchange Commission	95
13			
14			
15	17	Copy of letter from Manes, Sturim, Roth & Fisher to Amco Industries	95
16			
17	18	Copy of letter dated February 9, 1971, from Securities and Exchange Commission to John J. Sullivan, Esq., of Manes, Sturim, Roth & Fisher	95
18			
19			
20			
21	19	Copy of letter from Bernard S. Kanton to Division of Corporation Finance, Securities and Exchange Commission, dated March 23, 1970	95
22			
23			
24	20	Copy of letter dated August 4, 1967, from Securities and Exchange Commission to Bernard S. Kanton	96
25			

EXHIBITS (Continued)Golkin
for Id.Page

21

Copy of letter dated April 14,
1970, from Securities and Ex-
change Commission to Bernard S.
Kanton

96

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CERTIFICATION

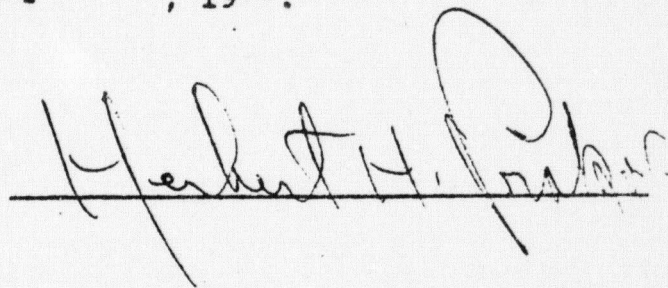
1
2 STATE OF NEW YORK)
3) ss.
4 COUNTY OF NEW YORK)

5
6 I, Herbert H. Prokop , a shorthand reporter and
7 Notary Public within and for the State of New York, do
8 hereby certify that:

9 Saul Golkin , the witness whose examination
10 before trial is herein before set forth, was duly sworn
11 by me, and that such examination before trial is a true and
12 accurate record of the testimony given by said witness;
13 and

14 I further certify that I am not related to any
15 of the parties to this action by blood or marriage, and
16 that I am in no way interested in the outcome of this
17 matter.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 22nd day of July , 1971.

20
21 
22
23
24
25

0228
DOCKETED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

SEP 14 1971

H. STUART CUNNINGHAM

At o'clock
CLERK

JOHN COLEMAN,
Plaintiff,

vs.

GOLKIN, BOMBACK & CO., INC.,
a corporation; and SAUL GOLKIN,
Defendants.

NO. 71 C 1037

AMENDED COMPLAINT

Count I

NOW COMES the plaintiff John Coleman by his attorneys and for his Complaint against the defendant Golkin, Bomback & Co., Inc., a corporation, alleges as follows:

1. Plaintiff is a citizen of the State of Illinois. Golkin, Bomback & Co., Inc. ("Golkin Bomback"), a corporation, is a corporation organized and existing under the laws of the State of New York, having its principal place of business in the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

2. In January 1962, plaintiff became employed by Divine & Fishman, Inc. ("Divine & Fishman") a New York corporation doing business as a stock brokerage firm, for the purpose of setting up a corporate finance department

which would, among other things, assist customers and clients of said firm to acquire other corporations and businesses.

3. Under the terms of plaintiff's employment with Divine & Fishman, plaintiff was to receive, among other things, on those transactions wherein he performed certain services, a percentage of any equity participation paid to Divine & Fishman as a fee for the services it rendered.

4. During the course of plaintiff's employment with Divine & Fishman, plaintiff performed certain services which ultimately led to a corporate reorganization of Midwest Triumph Distributors, Inc.; Mid-States Jaguar, Ltd.; and Gellman Manufacturing Company ("Gellman"), an Illinois corporation.

5. For the services rendered by Divine & Fishman in connection with said reorganization, an option to purchase 50,000 Common shares \$1.00 par value stock in Gellman was given to Divine & Fishman. A true and correct copy of the Option Agreement which contained all the terms and conditions of said option was executed at Chicago, Illinois on or about August 22, 1962 and a true and correct copy thereof is attached hereto marked Exhibit A.

6. During the course of the negotiations leading up to the consummation of the reorganization, Divine & Fishman and plaintiff entered into a certain Nominee Agreement, a true and correct copy of which is attached hereto marked Exhibit B.

7. The express terms and provisions of said

Nominee Agreement were as follows and no other:

"1. Divine & Fishman agrees, with respect to the foregoing option to purchase 50,000 Common Shares of Gellman Manufacturing Company, that it is holding 10% of said option or the right to purchase 5,000 Common Shares as nominee for the benefit of Coleman.

"2. Divine & Fishman agrees that in the event it sells said option Coleman shall be entitled to receive 10% of the net proceeds (after deducting Coleman's proportionate share of fees and expenses) resulting from the sale of said option. In the event that Divine & Fishman elects to exercise part or all of said option, Coleman agrees that he shall pay or be responsible for 10% of the gross exercise price thereof and, thereupon, Coleman shall be the beneficial owner of 10% of the shares acquired on the exercise of said option and he shall be entitled to receive all dividends paid on said shares beneficially owned by him; provided, however, Divine & Fishman shall remain the record holder of said shares so acquired. In the event any or all of said shares so acquired on the exercise of the option are sold, Coleman shall be entitled to the net proceeds resulting from the sale of the shares beneficially owned by him.

"3. Divine & Fishman agrees that it shall consult with Coleman with respect to the exercise or sale of the option or any shares acquired thereunder.

It being understood by all of the parties hereto that it may not be possible to divest said option or shares thereby permitting Coleman to be the record holder thereof and it may further be necessary that Divine & Fishman acting for itself and as nominee for Coleman make certain unilateral decisions with respect to the exercise of said option and/or the sale of shares acquired upon the exercise of said option, all of which is hereby consented to by Coleman."

8. Subsequent to August 22, 1962, Gellman underwent a corporate reorganization, the exact nature of which is unknown to plaintiff, which resulted in Gellman being succeeded by Amco Industries, Incorporated, a Delaware corporation ("Amco").

9. Subsequent to August 22, 1962, Divine & Fishman changed its name to Golkin, Bomback & Co., Inc.

10. Under the terms and conditions of the Option Agreement Gellman granted to Divine & Fishman, said option was to be exercised between January 1, 1963 and December 31, 1967.

11. Prior to December 31, 1967, Golkin Bomback without notice to or consultation with plaintiff sent a letter dated December, 1967, to Amco, a true and correct copy of which is attached marked Exhibit C, wherein it exercised the option and subsequently acquired 50,000 shares of the Common Stock of Amco at a price of \$2.00 per share.

12. On or about March 20, 1971, without notice to or consultation with plaintiff, Golkin Bomback sold all

of the 50,000 shares of stock of Amco they acquired under the aforesaid option agreement.

13. In breach and violation of the Nominee Agreement, Golkin Bomback failed to consult with plaintiff prior to the exercise of said option; failed to notify plaintiff of the acquisition of said shares or request that plaintiff pay 10% of the purchase price; failed to deliver to the plaintiff his share of any dividends paid on said stock while held by Golkin Bomback; and failed to notify or consult with plaintiff prior to the sale of said stock by Golkin Bomback.

14. In further breach and violation of the Nominee Agreement, Golkin Bomback has notified plaintiff that plaintiff has no right or interest in any of the Amco stock or in the proceeds from the sale of said stock.

15. Plaintiff further alleges that the market value of the Common Stock of Amco at the time of its sale by Golkin Bomback was \$20.00 per share; and that the sale of the 5,000 shares which Golkin Bomback held for the benefit of plaintiff under said Nominee Agreement yielded \$100,000.00.

16. Plaintiff further alleges that by reason of the breach of the Nominee Agreement by Golkin Bomback, plaintiff has sustained damages in the sum of \$90,000.00.

WHEREFORE, plaintiff prays for the entry of a judgment against the defendant Golkin Bomback & Co., Inc., a corporation, in the amount of \$90,000.00 plus interest

at the legal rate and its costs sustained herein.

Count II

NOW COMES the plaintiff John Coleman by his attorneys and for his Complaint against the defendant Saul Golkin, alleges as follows:

1. Plaintiff is a citizen of the State of Illinois. The defendant Saul Golkin ("Golkin") is a citizen of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

2 to 11. Plaintiff repeats and realleges paragraphs 2 through 11 of Count I as paragraphs 2 through 11 of his Count II.

12. At all times material hereto Golkin was, and still is, a director and the chief executive officer and the dominant shareholder of Golkin Bomback.

13. Section 60 of the New York General Corporation Law provides in pertinent part as follows:

"An action may be brought against one or more of the directors or officers of a corporation to procure judgment for the following relief or any part thereof:

1. To compel the defendants to account for their official conduct, including any neglect of or failure to perform their duties, in the management and disposition of the funds

and property, committed to their charge.

2. To compel them to pay to the corporation, or to its creditors, any money and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by or through any neglect of or failure to perform or other violation of their duties."

14. Section 61 of the New York General Corporation Law provides in pertinent part as follows:

"An action may be brought for the relief prescribed in the last section [Section 60], * * * by the corporation or a creditor, receiver or trustee in bankruptcy thereof, or by a director or officer of the corporation."

15. On or about March 30, 1965, prior to exercising the option to purchase the Amco stock, Golkin caused Golkin Bomback to adopt a plan of complete liquidation and dissolution, and pursuant to said plan Golkin caused all of Golkin Bomback's assets of value, except the Option Agreement, to be distributed to the then shareholders of Golkin Bomback. As a result of said plan of liquidation and distribution, the only asset of Golkin Bomback in existence when the Amco option was exercised was the Option Agreement itself.

16. In breach and violation of the duty owed plaintiff, Golkin permitted certain persons, some of whom

were shareholders and directors of Golkin Bomback, and some of whom were not, to advance funds to Golkin Bomback for the purpose of acquiring the 50,000 shares of common stock of Amco in the name of Golkin Bomback with the express understanding that when said stock was subsequently sold by Golkin Bomback said persons would receive a pro rata share of the profits derived from such sale based upon the number of shares of stock they paid for at the rate of \$2.00 per share.

17. In breach and violation of plaintiff's rights under his Nominee Agreement, and the duties that Golkin as the chief executive officer, director and dominant shareholder of Golkin Bomback owed plaintiff, Golkin, although he was then aware of plaintiff's rights under the Nominee Agreement, failed and refused to notify or consult with plaintiff about the exercise of the Amco option; and failed to notify plaintiff that agreements with others were being entered into for the purpose of acquiring 50,000 shares of the common stock of Amco, which agreements precluded plaintiff from participating in said option.

18. Subsequent to the issuance of the stock of Amco, Golkin kept said stock in his personal possession and treated said stock as his sole property.

19. On or about March 20, 1971, Golkin directed Axelrod & Co., a brokerage with whom he was then associated to sell the 50,000 shares of Amco stock owned by Golkin Bomback and distribute the proceeds of said sale directly to those

persons who had previously advanced funds for the purchase of said stock.

20. As a result of said direction, the proceeds from the sale of the Amco stock issued to Golkin Bomback never came into the possession of Golkin Bomback.

21. Plaintiff further alleges that the market value of the Common Stock of Amco at the time of its sale by Golkin Bomback was \$20.00 per share; and that the sale of the 5,000 shares which Golkin Bomback held for the benefit of plaintiff under said Nominee Agreement yielded \$100,000.00.

22. As a direct and proximate result of Golkin's breach of the duties he owed plaintiff, plaintiff has sustained damages in the sum of \$90,000.00.

WHEREFORE, plaintiff prays for the entry of a judgment against Saul Golkin in the amount of \$90,000.00 plus interest at the legal rate and his costs sustained herein.

Count III

NOW COMES the plaintiff John Coleman by his attorneys and for his Complaint against the defendant Saul Golkin, alleges as follows:

1. Plaintiff repeats and realleges paragraph 1 of Count II as paragraph 1 of Count III.

2 to 11. Plaintiff repeats and realleges paragraphs 2 through 11 of Count I as paragraphs 2 through 11 of Count III.

12. Plaintiff repeats and realleges paragraph 12 of Count II as paragraph 12 of Count III.

13. Section 276 of the New York Debtor Creditor Law provides as follows:

"Every conveyance made and every obligation incurred with actual intent to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors."

14 to 18. Plaintiff repeats and realleges paragraphs 15 through 19 of Count II as paragraphs 14 through 18 of Count III.

19. Pursuant to Golkin's direction, Axelrod & Co. transferred approximately \$366,000 to Golkin as the share of the proceeds from the sale of the Amco stock he claimed he was personally entitled to.

20. The transfer of \$366,000 to Golkin was intended to hinder, delay or defraud plaintiff of the rights he was entitled to pursuant to the Nominee Agreement; and said transfer was a fraudulent transfer of assets of Golkin Bomback in derogation of plaintiff's rights.

21. As a direct and proximate result of the transfer of \$366,000 to Golkin, plaintiff has been damaged in the amount of \$90,000.00.

WHEREFORE, plaintiff prays as follows:

1. Plaintiff demands that the exercise of 50,000 shares of Amco Common Stock made by defendant Saul Golkin

acting as a director of Golkin, Bomback & Co. in derogation of plaintiff's rights be declared fraudulent and void and a nullity as to plaintiff.

2. Plaintiff demands that defendant Saul Golkin be charged as a transferee with knowledge of the exercise in derogation of plaintiff's rights; that the exercise of the option be set aside as a fraudulent transfer; and that defendant be required to pay plaintiff damages in the sum of \$90,000.00, together with interest thereon at the rate of 7 per cent per annum until paid.

3. That the plaintiff have such other and further or different relief in the premises as the Court may deem equitable and proper.

Count IV

NOW COMES the plaintiff John Coleman by his attorneys and for his Complaint against the defendant Saul Golkin alleges as follows:

1. Plaintiff repeats and realleges paragraph 1 of Count II as paragraph 1 of Count IV.

2 to 11. Plaintiff repeats and realleges paragraphs 2 through 11 of Count I as paragraphs 2 through 11 of Count IV.

12. Plaintiff repeats and realleges paragraph 12 of Count II as paragraph 12 of Count IV.

13 to 17. Plaintiff repeats and realleges paragraphs 15 through 19 of Count II as paragraphs 13 through 17 of Count IV.

18 and 19. Plaintiff repeats and realleges paragraphs 19 and 20 of Count III as paragraphs 18 and 19 of Count IV.

20. Plaintiff alleges that for some time prior to the adoption of the Plan of Complete Liquidation and Dissolution and at all times subsequent thereto defendant Golkin Bomback was operated as the alter ego of defendant Golkin; that during said period Golkin Bomback did not have any genuine or separate corporate existence, but was used and existed for the sole purpose of permitting defendant Golkin to transact business under a corporate guise.

21. Plaintiff alleges that defendant Golkin caused his alter ego, Golkin Bomback, to exercise the Amco option without notice to or consultation with plaintiff in violation of the Nominee Agreement; and that the defendant Golkin through his alter ego, Golkin Bomback, perpetrated a fraud on plaintiff by transferring corporate assets, which constituted a trust fund for the payment of corporate debts and upon which plaintiff held an equitable lien.

22. Plaintiff further alleges that by reason of the foregoing facts, to prevent fraud and achieve equity the corporation Golkin Bomback should be disregarded and the defendant Golkin be held to stand in its place and stead and be held fully liable for its debts due the plaintiff.

23. As a direct and proximate result of the defendant Golkin's conduct, plaintiff has been damaged in

the sum of \$90,000.00.

WHEREFORE, plaintiff prays for the entry of a judgment against the defendant Saul Golkin in the sum of \$90,000.00, together with interest thereon and his costs sustained herein.

JOHN COLEMAN

By

Richard J. Brennan
One of his Attorneys

Richard J. Brennan
Peter O. Fetzer
Winston, Strawn, Smith & Patterson
One First National Plaza
Chicago, Illinois 60670
786-5600

OPTION AGREEMENT

OPTION AGREEMENT between GELLMAN MANUFACTURING COMPANY, an Illinois corporation ("GELLMAN") and DIVINE & FISHMAN, INC., a New York corporation, made this 23 day of AUGUST, 1962.

WHEREAS, GELLMAN has acquired all of the outstanding shares of Midwest Triumph Distributors, Inc. and Mid-States Jaguar, Ltd. in accordance with the Plan of Reorganization and Agreement For The Exchange of Stock of Midwest Triumph Distributors, Inc., and Mid-States Jaguar, Ltd. For Stock of Gellman Manufacturing Company dated April 27, 1962 (hereinafter referred to as the "Agreement"); and

WHEREAS, pursuant to said Agreement Gellman has agreed to grant to DIVINE & FISHMAN, INC. an option to purchase fifty thousand (50,000) Common Shares, \$1.00 par value, of Gellman;

NOW, THEREFORE, the parties hereto agree as follows:

1. GELLMAN hereby grants to DIVINE & FISHMAN, INC. the option to purchase a total of fifty thousand (50,000) Common Shares, \$1.00 par value of GELLMAN at a price of \$2.00 per share; said option to be exercisable between January 1, 1963 and December 31, 1967, both inclusive.

2. This option shall be non-transferable and non-assignable.

3. As a condition to the exercise of this option, DIVINE & FISHMAN, INC. will, upon the exercise of this option, represent and warrant to GELLMAN that it intends to acquire the

EXHIBIT A

Common Shares to be received by it for its own account for investment and not for disposition in a manner which would constitute a distribution within the meaning of the Securities Act of 1933, as amended, and DIVINE & FISHMAN, INC. agrees that it will not transfer said Common Shares so acquired unless it obtains (a) a written opinion of counsel to GELLMAN that such transfer may be made without registration of said Common Shares under the Securities Act of 1933 or (b) unless such registration has been effected. DIVINE & FISHMAN, INC. further agrees that the certificates representing Common Shares acquired upon the exercise of this option shall bear an appropriate legend setting forth the agreements contained in this paragraph.

4. If, at any time hereafter, GELLMAN shall file a registration statement under the Securities Act of 1933, for any securities of GELLMAN, ninety (90) days prior written notice of such intention to file a registration statement shall be given to DIVINE & FISHMAN, INC. and said registration statement shall, at the option of DIVINE & FISHMAN, INC. and at the expense of GELLMAN, include such Common Shares issued upon the exercise of this option as may be determined by DIVINE & FISHMAN, INC.

5. If, after the date hereof, the number of Common shares issued and outstanding shall be increased or reduced by split-up, combination, reclassification, or distribution of stock dividends, the number of Common Shares then still subject to the option, and the option price therefor shall be proportionately and equitably adjusted. Similarly, if GELLMAN participates in a recapitalization, consolidation, merger or reorganization, whether by statutory means, acquisition of property or stock, or otherwise, there shall be substituted for the Common Shares of

GELLMAN still then available for purchase pursuant to the option such number and kind of shares as would have been issuable in such transaction to DIVINE & FISHMAN, INC. had DIVINE & FISHMAN, INC. then been the holder of such Common Shares, and the option price for such substituted shares or securities shall be proportionately and equitably adjusted so as to prevent substantial dilution or enlargement of the option rights granted or available hereunder. In the event GELLMAN declares a dividend payable in stock of any of its subsidiaries or of any other companies, then GELLMAN shall retain in its treasury sufficient shares of said subsidiaries or other companies so that upon the exercise of the option, DIVINE & FISHMAN, INC. shall receive with each Common Share the same number of shares paid as a dividend in the same manner as if said share was issued and outstanding at the time of the declaration of said dividend.

IN WITNESS WHEREOF, this Option Agreement has been executed at Chicago, Illinois the day and year first above written.

(Corporate Seal)

GELLMAN MANUFACTURING COMPANY

ATTEST

James A. Martin
Secretary

By: *Horace E. Fisher*

President

Chairman of the Board

(Corporate Seal)

DIVINE & FISHMAN, INC.

ATTEST

Walter L. Burman
Asst. Sec.

By: *H. S. Quinn, Pres.*

NOMINEE AGREEMENT

THIS NOMINEE AGREEMENT made and entered into this 31st day of July, 1962, by and between DIVINE & FISHMAN, INC., a New York corporation ("Divine & Fishman") and JOHN COLEMAN ("Coleman").

WHEREAS, Divine & Fishman is the holder of an option to purchase 50,000 Common Shares of Gellman Manufacturing Company at a price of \$2.00 per share; said option exercisable between January 1, 1963 and December 31, 1967 and containing such other terms and conditions as are set forth in said option agreement;

NOW THEREFORE, the parties hereto agree as follows:

1. Divine & Fishman agrees, with respect to the foregoing option to purchase 50,000 Common Shares of Gellman Manufacturing Company, that it is holding 10% of said option or the right to purchase 5,000 Common Shares as nominee for the benefit of Coleman.
2. Divine & Fishman agrees that in the event it sells said option Coleman shall be entitled to receive 10% of the net proceeds (after deducting Coleman's proportionate share of fees and expenses) resulting from the sale of said option. In the event that Divine & Fishman elects to exercise part or all of said option, Coleman agrees that he shall pay or be responsible for 10% of the gross exercise price thereof and, thereupon, Coleman shall be the beneficial owner of 10% of the shares acquired on the exercise of said option and he shall be entitled to receive all dividends paid on said shares beneficially owned by him;

EXHIBIT B

provided, however, Divine & Fishman shall remain the record holder of said shares so acquired. In the event any or all of said shares so acquired on the exercise of the option are sold, Coleman shall be entitled to the net proceeds resulting from the sale of the shares beneficially owned by him.

3. Divine & Fishman agrees that it shall consult with Coleman with respect to the exercise or sale of the option or any shares acquired thereunder. It being understood by all of the parties hereto that it may not be possible to divest said option or shares thereby permitting Coleman to be the record holder thereof and it may further be necessary that Divine & Fishman acting for itself and as nominee for Coleman make certain unilateral decisions with respect to the exercise of said option and/or the sale of shares acquired upon the exercise of said option, all of which is hereby consented to by Coleman.

IN WITNESS WHEREOF, the parties hereto have executed this Nominee Agreement the day and year first above written.

DIVINE & FISHMAN, INC.

By James Fishman

John B. Coleman
JOHN COLEMAN

0246
5-77-71 033
GOLKIN, BOMBACK & CO., INC.

Members of New York Stock Exchange and American Stock Exchange
67 BROAD STREET, NEW YORK 4, N. Y. • WH 4-8338

BRANCH OFFICES
CHICAGO, ILLINOIS
BALTIMORE, MARYLAND
PITTSBURGH, PENNSYLVANIA
NEW CASTLE, PENNSYLVANIA
TOLEDO, OHIO
JERSEY CITY, N. J.

December , 1967

Amco Industries, Inc.
1640 N. LaSalle Street
Chicago, Illinois

Re: Exercise of Options

Gentlemen:

The undersigned, the President of Golkin & Bomback, Inc. (formerly Divine & Fishman, Inc.) hereby notifies you that my firm is exercising its option to purchase fifty thousand (50,000) shares of Common Stock of Amco Industries, Inc. (formerly Gellman Manufacturing Company) pursuant to the option agreement entered into between us on August 22, 1962.

Certified In accordance with the terms of said option agreement, our check in the sum of \$100,000 is enclosed for the purchase of the said 50,000 shares of Common Stock, \$1.00 par value, of Amco Industries, Inc. as of this date. Please deposit such check to the account of the corporation only as of the date that your transfer agent notifies you that it has mailed the stock certificates for said 50,000 shares to our firm, attention of the undersigned, at 67 Broad Street, New York, New York 10004.

Golkin & Bomback, Inc. herewith represents and warrants that it is acquiring these 50,000 shares of Common Stock for its own account for investment and not for disposition in a manner which would constitute a distribution within the meaning of the Securities Act of 1933, as amended; and Golkin & Bomback, Inc. also agrees that it will not transfer said Common Shares unless it obtains (a) a written opinion of counsel to Amco Industries, Inc. that such transfer may be made without registration of said Common Shares under the Securities Act of 1933 or (b) unless such registration has been effected; and Golkin & Bomback, Inc. further agrees that the certificates representing said Common Shares herein being acquired will bear an appropriate legend setting forth the agreements contained in this paragraph.

Very truly yours, *C.*
GOLKIN & BOMBACK, INC.

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

By *[Signature]*
President

CC: Messrs. Arvey, Hodges & Mahtyband
Att: Marshall L. Burnan, Esq.

EXB. 7
DATE 7/1/71
For Ident.
H. PROKOP

EXHIBIT C

A 0247

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN COLEMAN,
Plaintiff,

vs.

GOLKIN, BOMBACK & CO., INC.,
a corporation; and SAUL GOLKIN,
Defendants.

NO. 71 C 1037

AMENDED COMPLAINT

WINSTON. STRAWN. SMITH & PATTERSON
ATTORNEYS AT LAW
ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60670

*Noted
J.T.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JOHN COLEMAN,

Plaintiff,

-against-

Golkin, BOMBACK & Co., INC., a
corporation; and SAUL GOLKIN.

Defendants.
-----x

CIVIL ACTION
NO.

ANSWER OF DEFENDANTS
GOLKIN, BOMBACK & CO., INC. and SAUL GOLKIN

Defendant, Golkin, Bomback & Co., Inc., by its
attorneys, Manes, Sturim, Roth & Fisher, for its answer to
Count I of the amended complaint and defendant, Saul Golkin,
by his attorneys, Manes, Sturim, Roth & Fisher, for his
answer to Counts II, III and IV of the amended complaint alleges
as follows:

COUNT I

1. Denies knowledge or information sufficient to form
a belief as to the allegations in the first sentence of Paragraph
1. Denies the allegations of the second sentence of Paragraph 1
except admits that Golkin, Bomback & Co., Inc. was a corporation
existing under the laws of the State of New York.
2. Denies knowledge or information sufficient to form
a belief as to the allegations of Paragraph 2.
3. Denies knowledge or information sufficient to form

a belief as to the allegations of Paragraph 3.

4. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 4.

5. Denies the allegations of Paragraph 5 except admits an option to purchase 50,000 common shares, \$1.00 par value, in Gellman was given to Divine & Fishman, Inc. and refers to Exhibit A, for the terms hereof.

6. Denies the allegations of Paragraph 6.

7. With respect to Paragraph 7, denies the contract or its validity and refers to Exhibit "B" for the alleged terms of the alleged agreement.

8. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 8.

9. Admits the allegations of Paragraph 9.

10. Admits the allegations of Paragraph 10.

11. Denies the allegations of Paragraph 11 except admits the exercise of options by holders.

12. Denies the allegations of Paragraph 12 except admits the sale by the holders of the shares owned.

13. Denies the allegations of Paragraph 13.

14. Denies the allegations of Paragraph 14 except admits that plaintiff was notified that it had no right or interest in any of the Amco stock or in the proceeds from the sale of said stock.

15 to 17. Denies the allegations of Paragraphs 15 to 17.

COUNT II

I, Denies knowledge or information sufficient to

form a belief as to the allegations in the first sentence of Paragraph 1. Denies the allegations of the second sentence of Paragraph 1 except admits that Saul Golkin was a citizen of the State of New York.

2 to 11. In answer to Paragraphs 2 to 11 inclusive incorporates by reference Paragraphs 2 to 11 of Count I above.

12. Denies the allegations of Paragraph 12 except admits that Golkin was a director, officer and shareholder of Golkin, Bomback & Co., Inc.

13 to 14. Refers to the statute for all pertinent provisions.

15. Denies allegations of Paragraph 15 except admits that Golkin, Bomback & Co., Inc. adopted a plan of complete liquidation and dissolution.

16 to 22. Denies the allegations of Paragraphs 16 to 22.

COUNT III

1 to 12. In answer to Paragraphs 1 through 12 incorporates by reference 1 through 12 of Count II above.

13. Refers to the statute for pertinent provisions.

14 to 18. In answer to Paragraphs 14 to 18 incorporates by reference Paragraphs 15 to 19 of Count II.

19 to 21. Denies the allegations of Paragraphs 19 to 21.

COUNT IV

1 to 19. In answer to Paragraphs 1 to 19 incorporates by reference Paragraphs 1 to 12, 15 to 19 of Count II and 19 to 20 of Count III above.

20 to 23. Denies the allegations contained in Paragraphs 20 to 23.

Defendants allege the following affirmative defenses:

FOR A FIRST AFFIRMATIVE DEFENSE

24. The complaint fails to state a claim against defendants upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

25. Defendant, Saul Golkin, acquired an interest in Divine & Fishman, Inc. in or about 1962 and 1963. After the acquisition of such interest, without notice to Saul Golkin, the plaintiff fraudulently entered into an alleged nominee agreement and fraudulently predated same. Plaintiff's purpose and intent was to defraud and deceive defendants that there was a pre-existing valid and binding agreement. Said nominee agreement was void.

FOR A THIRD AFFIRMATIVE DEFENSE

26. Plaintiff knew of the option exercise date. Plaintiff failed to exercise the option or join in its exercise. Plaintiff knew of its exercise, failed and refused to pay for or to offer his pro rata part of the option price and his rights, if any, terminated.

FOR A FOURTH AFFIRMATIVE DEFENSE

27. Defendants repeat and reallege the allegations contained in the Third Affirmative Defense and further allege that plaintiff fraudulently and willfully failed to notify defendants of his claim of right or interest and knowingly intended to await the sale to determine if there would be a profit or loss; upon the sale at a profit, plaintiff tendered in bad faith, waived his claims and rights and is estopped from making any claim at this time.

WHEREFORE, defendants, Golin, Bomback & Co., Inc. and Saul Golkin, demand a judgment dismissing the complaint and awarding them the costs and disbursements of this action together with such other relief as the court may deem just and proper.

May 12, 1972

MANES, STURIM, ROTH & FISHER

By David Fisher
A Member of the Firm

Attorneys for Defendants
250 Park Avenue
New York, New York 10017
(212) 687-0900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOHN COLEMAN,

Plaintiff,

OPINION

-against-

GOLKIN, BOMBACK & CO., INC., a
Corporation; and SAUL GOLKIN,

72 Civ. 875
(JMC)

Defendants.

-----X

CANNELLA, D.J.:

Plaintiff is granted judgment against defendant Golkin, Bomback & Co., Inc. in the amount of \$80,000. Plaintiff's claims against Saul Golkin individually, are dismissed.

FACTS

In this diversity case, tried before the Court on August 4, 1975, the facts are best developed in chronological order.

In January of 1962 plaintiff John Coleman began working for Divine & Fishman, Inc. ["Divine & Fishman" or simply "D&F"], ^{1/} a New York brokerage firm with an office in Chicago, Illinois. D&F, licensed by the Securities and Exchange Commission ["SEC"], was a member firm of the New

York Stock Exchange among others. Coleman, a member of D&F's corporate finance department, testified that his employment contract provided for compensation of between eighteen and twenty thousand dollars per year plus a ten percent interest in any warrants or stock options received by D&F in connection with those transactions that Coleman was responsible for arranging.

During 1962 Don Ross and Hal Oppen, principal shareholders of Mid-States Jaguar, Ltd. ["Mid-States"] and Midwest Triumph Distributors, Inc. ["Midwest"], became clients of D&F for the purpose of acquiring a listed company. This job was assigned to Coleman and eventually an agreement was reached whereby Ross and Oppen would exchange all of the outstanding shares of Mid-States and Midwest stock with Gellman Manufacturing Company ["Gellman"] for 850,000 common shares of Gellman. As compensation for its part in the transaction, Divine & Fishman was granted an option to purchase 50,000 common shares of Gellman at \$2.00 per share. The option was exercisable at any time from January 1, 1963 until December 31, 1967. Although this "Option Agreement" was reached prior to April 27, 1962, it was not formalized in an executed contract until August 22, 1962.

Coleman further testified that during April or May of 1962 he reached a verbal agreement with Divine & Fishman regarding his right to a ten percent interest in the Option Agreement. However, no writing to that effect was executed until sometime thereafter. In the interim, Coleman had left D&F's employ (this was in either July or August, 1962) and Divine & Fishman had begun negotiations with Saul Golkin ["Golkin"], George Golkin, Milton Bomback and Golkin, Bomback & Co., a partnership, concerning the individuals' desire to acquire an ownership interest in D&F. These negotiations culminated in a written agreement dated December 12, 1962 between Divine & Fishman, Inc., and Saul Golkin, Milton Bomback and George Golkin individually.^{2/} The agreement resulted in the transfer of a substantial number of voting shares of D&F to the three individuals.^{3/} Additionally, the firm name was changed to Golkin, Divine & Fishman, Inc. and Bomback and Saul Golkin joined Divine and Fishman as chief executive officers of the corporation. Various warrants and options owned by D&F, including the Gellman option, remained assets of the newly named corporation; although Golkin was not aware of it when he signed the December 12 agreement, certain shareholders and employees of D&F

had contractual interests in these options and warrants.

In either late 1962 or early 1963, Hal Divine and Seymour Fishman contacted Marshall Burman, the corporation's attorney, and requested that he prepare a document incorporating what he had been advised was the compensation arrangement between the firm and Coleman regarding the Gellman transaction. Although this "Nominee Agreement" was executed well after the Option Agreement itself and even after the Golkins and Bomback had purchased their interests in D&F and changed the firm name to Golkin, Divine & Fishman, Inc., it was signed by Seymour Fishman for Divine & Fishman, Inc., and dated July 31, 1962, the date the parties thought the Option Agreement had been executed.^{4/} This document indicated, inter alia, that Coleman was entitled to ten percent participation in the Gellman option should D&F decide to exercise it.

In May or June of 1963, Saul Golkin and Milton Bomback purchased the interests of Hal Divine and Seymour Fishman in Golkin, Divine & Fishman, Inc. Of course, Fishman and Divine ceased being officers of the company and the corporate name was changed once more to Golkin, Bomback & Co., Inc. ["GB&Co."]. Even this state of affairs was short-lived, as in late 1964 Golkin purchased the

shares of stock then owned by Milton Bomback, thus acquiring a controlling interest in the corporation. A few other shareholders retained small holdings. The Cellman option remained a corporate asset throughout these transactions.

On March 30, 1965 the shareholders and directors of Golkin, Bomback & Co., Inc. voted to dissolve the corporation. Pursuant to this resolution virtually all of the assets of GB&Co. were liquidated and a distribution was made to the existing shareholders. The only assets of GB&Co. that remained after March of 1965 were those that could not be liquidated; this included the Gellman option.

Saul Golkin testified that even at this late date he was not aware of the various interests prior shareholders and employees of Divine & Fishman had in the Gellman option. He remained unaware of these interests until November or December of 1967, when he began to consider exercising the option.^{5/} Because Golkin, Bomback & Co. did not at that time have funds sufficient to exercise the option, Golkin planned to offer each of the former shareholders of GB&Co. the opportunity to participate in a percentage roughly equal to his prior holding in the company.^{6/} These individuals would be required to

deposit their share of the option price in the corporate checking account.

During this period in late 1967, Robert Albert, a former shareholder, officer and employee of Divine & Fishman, contacted Golkin personally and informed him that he was entitled to a ten percent share in the proceeds of the Gellman option, should it be exercised by GB&Co. Golkin accepted this claim at face value^{7/} and, when he actually made offers of participation in the option, Albert was included.

After consulting with the various other parties involved and without a formal shareholder vote or corporate resolution, Golkin exercised the option on behalf of Golkin, Bomback & Co.^{8/} In accordance with the Option Agreement, 50,000 shares of Amco stock bearing a legend embodying a share transfer restriction were issued to GB&Co. in exchange for \$100,000.

Thereafter, when it became apparent that a substantial profit could be made thereby, Golkin became desirous of selling the Amco stock. He initiated attempts to obtain the permission of the SEC for removal of the share transfer restriction, which would allow public sale of the option stock. In addition, he personally contacted

each of the subscribers and reached an agreement regarding the sale of the Amco stock. When, in February of 1971, permission to remove the share transfer restriction was granted by the SEC, all 50,000 shares were sold at a substantial profit. Each participant's share of the proceeds was tendered directly to him by Golkin.^{9/}

After the sale plaintiff Coleman met Marshall Burman, then counsel to Amco, at a social event and was informed of the exercise of the option and later sale of the Amco stock. Of course, Coleman immediately took steps to enforce his claimed right to ten percent of the proceeds and his interest was understandably disclaimed by Golkin. Coleman brings this suit against Golkin, Bomback & Co., Inc., and Saul Golkin individually to recover ten percent of the profits realized from the exercise of the Gellman option.

^{10/}
DISCUSSION

Liability of the Corporate Defendant

The Court finds that the defendant corporation was under a valid contractual obligation to hold ten percent of the Gellman option as nominee for Coleman's benefit and to "consult with Coleman with respect to the exercise or sale of the option or any shares acquired

thereunder." Nominee Agreement ¶ 3. Upon exercise of the option and later sale of the shares so acquired, Coleman became entitled to receive ten percent of the net proceeds. Thus, when the option was exercised in 1967 without consultation with Coleman^{11/} and the shares were sold so acquired/in 1971 for a substantial profit without Coleman's participation, GB&Co. breached this contractual obligation.

The defendants contend that the Nominee Agreement is void and unenforceable because it had its genesis in fraud and deceit. Their main argument in this regard is that the agreement was executed without authority, predated to July 31, 1962 and kept secret from the principals of Golkin, Divine & Fishman, Inc., all for the purpose of saddling D&F's successor corporation with an added obligation accruing to the benefit of John Coleman. The facts in this case, however, belie this argument.

The Court finds credible Coleman's uncontradicted testimony regarding his compensation agreement with Divine & Fishman. (The existence of this compensation agreement is indirectly corroborated by the testimony of Robert Albert, another employee of D&F with a similar compensation arrangement.^{12/}) This entitled Coleman to a

ten percent interest in all warrants and stock options received by D&F in connection with deals on which he worked. Because Coleman was largely responsible for putting together the Mid-States-Midwest-Gellman merger, he became entitled to a beneficial interest in ten percent of the Gellman option.

Furthermore, far from being kept secret, the Nominee Agreement was prepared by GD&F's own counsel at the direction of two of its "chief executive officers" and signed by one of them. If Saul Golkin, the only witness for the defense, was not aware of the agreement, it was either because he left all of the details of the corporate operations to counsel and Milton Bomback, as was apparently the case while Bomback was with the firm, or was not interested enough to make his own inquiry, as appears to be the case thereafter.

This leaves the predating of the agreement as the only remaining factor that would indicate fraud in its execution.^{13/} Ordinarily, the mere predating of a written agreement will not serve to make that writing void. *Gottfried v. Gottfried*, 50 N.Y.S.2d 951, 953 (Sup. Ct. N.Y. County 1944), aff'd, 269 App. Div. 413, 56 N.Y.S.2d 50 (1st Dep't 1945). The explanation offered for the predating

and found credible by the Court is that the parties wanted the Nominee Agreement to reflect the date Coleman's interest in the Gellman option actually accrued, the date of the Option Agreement itself. ^{14/}

In sum, the Court finds the circumstances surrounding the execution of the Nominee Agreement insufficient to vitiate this otherwise valid contract. ^{15/}

Individual Liability of Corporate Directors and Officers

The liability of Saul Golkin individually presents a more difficult problem. In support of his contentions therefor, plaintiff presents two basic theories. The first is predicated upon Section 720 of the New York Business Corporation Law, formerly Sections 60 and 61 of the New York General Corporation Law. ^{16/} The second theory is basically an equitable one, to wit, that Golkin's conduct in causing the corporate defendant to breach its contract with Coleman renders Golkin individually liable.

The Business Corporation Law Claim

In pertinent part, Section 720 states that

(a) An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

(1) To compel the defendant to account for his official conduct in the following cases:

(A) The neglect of, or failure to perform or other violation of his duties in the management and disposition of corporate assets committed to his charge.

(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

Although subsection (a) is written in broad terms, subsection (b) limits the relief to the "corporation, or a receiver, trustee in bankruptcy, officer, director or judgment creditor thereof. . . ."

Plaintiff cites to the Court a body of law that holds corporate officers and directors liable under the above statute for mere negligence in the handling of corporate assets. A cursory examination of these cases, however, reveals that they are inapplicable to the issues before the Court. Sections 60 and 61 of the General Business Law and their successor, Section 720 of the Business Corporation Law, have as their specific purpose the protection of creditors with claims that have accrued prior to the allegedly improper transfer. See Darcy v. Brooklyn & N.Y. Ferry Co., 196 N.Y. 99, 103, 89 N.E. 461 (1909) (decided

under even another forerunner of the present statute, Section 1781 of the Code of Civil Procedure); Admiral Corp. v. Cohen, 327 N.Y.S.2d 422, 68 Misc.2d 687 (Sup. Ct. Albany County 1971). They serve to prevent the directors of a corporation from divesting it of all of its assets without first affording a reasonable opportunity to its creditors to present and enforce their claims. Darcy, supra. See also Feigenbaum v. Narragansett Stables Co., 215 N.Y.S. 328, 331, 127 Misc. 114 (Sup. Ct. Kings County 1926), aff'd, 219 App. Div. 729, 219 N.Y.S. 811 (3d Dept. 1927), aff'd, 245 N.Y. 628, 157 N.E. 886 (1927); Cullen v. Friedland, 152 App. Div. 124, 136 N.Y.S. 659 (1st Dept. 1912). The situation before the Court is not one in which it is alleged that a corporate officer or director interfered with a creditor's ability to reach corporate assets to enforce a pre-existing obligation of the corporation. Rather, it was the complained-of actions that created the liability to Coleman. Thus, under New York law these sections are inapplicable to the instant controversy.

Interference with Performance of the Contract

Although on the facts herein an action does not lie under the Business Corporation Law, ^{under New York common law} Golkin's liability may still be predicated upon his actual participation in

fraud, malfeasance or other tortious conduct that was injurious to Coleman. E.g., Admiral Corp. v. Cohen, 327 N.Y.S.2d 422, 424, 68 Misc. 2d 687 (Sup. Ct. Albany County 1971). On this score plaintiff argues that Golkin's actions in causing the corporation to breach its contract with Coleman should subject him to liability individually.^{17/}

Absent activity constituting independent tortious conduct, officers of a corporation will not ordinarily be held personally liable to one who contracted with the corporation, on the theory of causing or inducing a breach of contract. Dale v. Aetna Indus. Corp., 50 App. Div. 2d 782, 376 N.Y.S.2d 563 (1st Dep't 1975); Roberts v. Finkel, 46 App. Div. 2d 878, 362 N.Y.S.2d 176 (1st Dep't 1974); Turntables, Inc. v. M.B. Plastics Corp., 31 App. Div. 2d 792, 297 N.Y.S.2d 51 (1st Dep't 1969); Rothschild v. World-Wide Automobiles Corp., 24 App. Div. 2d 861, 264 N.Y.S.2d 705 (1st Dep't 1965), aff'd, 18 N.Y.2d 982, 224 N.E.2d 724, 278 N.Y.S.2d 218 (1966); Janoff v. Sheepshead Towers, Inc., 22 App. Div. 2d 950, 256 N.Y.S.2d 45 (2d Dep't 1964), aff'd, 16 N.Y.2d 949, 212 N.E. 535, 265 N.Y.S. 2d 100 (1965); Potter v. Minskoff, 2 App. Div. 2d 513, 156 N.Y.S.2d 872 (4th Dep't 1956). It appears that, in order

to be tortious, such interference with plaintiff's contractual rights must have been either for personal gain, solely to deprive the third party of the contract benefits, Turntables, supra; Fermetal Steel Corp. v. Heckett, 6 App. Div. 2d 781, 174 N.Y.S.2d 719 (1st Dep't 1958); Potter, supra, or against the interests of the corporation. Rubin v. M.S.W. Hotels, Inc., 275 App. Div. 829, 89 N.Y.S.2d 241 (1st Dep't 1949); Burr v. American National Theatre & Academy, 103 N.Y.S.2d 589, 592-93 (Sup. Ct. N.Y. County), aff'd, 278 App. Div. 908, 105 N.Y.S.2d 901 (1st Dep't 1951).^{18/}

An illustrative case is Navarro v. Fiortia, 271 App. Div. 2d 62, 62 N.Y.S.2d 730 (1st Dep't 1946), aff'd, 296 N.Y. 783, 71 N.E.2d 468 (1947), which was before the court on a motion to dismiss for failure to state a claim. Plaintiff alleged that he had an employment contract with a corporation, which entitled him to a commission on all export orders obtained by him. He further alleged that the defendant, general manager of the corporation, wrongfully disposed of 19 million razor blades which were to be used in filling export orders, converting them to his own use with the intention of interfering with plaintiff's contract and depriving him of his commissions. In affirming denial of the motion to dismiss, the Appellate Division

found the general rule that an officer of a corporation will not be held liable for interference with a contract of his corporate employer inapplicable where he "clearly is not acting as such for the corporation but in his own interest against the corporation." 62 N.Y.S.2d at 732 (emphasis in original). Moreover, the court found the allegation that the act had been performed with full knowledge of plaintiff's contract and "with the malicious design of interfering therewith," 62 N.Y.S.2d at 732, to allege a wrong to the plaintiff as well as to the corporation.

Applying this law to the instant case, the Court finds that, while Golkin's actions with respect to the Gellman option may have been rather cavalier, they were not predatory, malicious or against the interests of the corporation, nor were they "without legal or social justification." See Rothschild v. World-Wide Automobiles Corp., 24 App. Div. 2d 861, 264 N.Y.S.2d 705, 706 (1st Dep't 1965), quoting Hornstein v. Podwitz, 254 N.Y. 443, 173 N.E. 674 (1930).^{19/}

The evidence shows that Golkin, realizing the opportunity presented by the Gellman option would otherwise be squandered, formulated a plan whereby former shareholders

of GB&Co. (the owner of the option) could participate in percentages equal to their former ownership of the corporation. Several contractual interests in the option were unknown to Golkin, ^{20/} but, as can be seen from the Albert incident, Golkin was willing to offer "a piece of the action" to all those entitled to it. Far from being actuated by a desire to deprive Coleman of his contractual rights, Golkin's actions are indicative of a good faith effort to spread the benefits as well as the risks of the Gellman option among those he thought entitled to them.

In fact, at the time the option was exercised, there were substantial risks involved. On the public market shares in Amco were trading at or slightly above \$2.00 per share, the option price. Golkin decided to exercise the option on the basis of rumors that a successful businessman was about to purchase an interest in Amco. Golkin shared these rumors with the prospective participants.

In sum, although Golkin eventually did derive a substantial profit from the exercise of the Gellman option, it cannot be said that his predominant motive was either to deprive Coleman of a pecuniary benefit or to obtain such benefit for himself.

CONCLUSION

In accordance with the above, plaintiff is awarded judgment against the defendant Golkin, Bomback & Co., Inc., in the amount of \$80,000.^{21/} The complaint is dismissed with prejudice as to defendant Saul Golkin. Costs are to be borne by the respective parties.

The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

SO ORDERED.

12 **JOHN M. CANNELLA**

JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
October 18, 1976.

F O O T N O T E S

- 1/ The president of Divine & Fishman was Hal Divine; Seymour Fishman was the executive vice president.
- 2/ With the execution of the December 12 agreement, Golkin, Bomback & Co. ceased doing business and certain of its assets were transferred to Divine & Fishman, Inc.
- 3/ While Hal Divine and Seymour Fishman retained their stock holdings, D&F acquired the shares it sold to the Golkins and Bomback by redeeming its other outstanding shares. Some of the shares were redeemed from Robert Albert, who had been both a shareholder and employee of Divine & Fishman, Inc. up until the time of the December 12 agreement. Pursuant to the agreement containing the terms of Albert's separation from D&F, Albert was entitled to a ten percent interest in any warrants and options owned by the company as of the date of the separation agreement. See ¶ 3 and Schedule A to Exhibit A of Burman Deposition Exhibit 4. This included the Gellman option.
- 4/ The Court here notes that Seymour Fishman was a chief executive officer of both Divine & Fishman, Inc. and Golkin, Divine & Fishman, Inc. and that the Nominee Agreement was prepared by the corporation's attorney, Marshall Burman. Defendant herein do not contend that Fishman was without authority to enter into contracts such as the Nominee Agreement on behalf of the corporation.
- 5/ By this time, Gellman Manufacturing Co. had undergone a transformation of its own and had become Amco Industries, Inc. ["Amco"].
- 6/ At this stage, Saul Golkin owned approximately 88% of the stock in Golkin, Bomback & Co., was its chief executive officer, and controlled election of the board of directors. In essence, he was in virtual control of the corporate operations.

- 7/ It appears from Albert's termination agreement with Divine & Fishman, Inc., an exhibit to the December 12, 1962 agreement, that he was entitled to a ten percent interest in the option. See n.3, supra. According to Exhibit B of Burman Deposition Exhibit 4, Milton Heller, a former employee and shareholder of Divine & Fishman, was entitled to a 7.8% share of the option. The right to participate therein was never offered to him, nor was he ever contacted with respect to the option. The record contains no explanation of this.
- 8/ In addition to Albert, a nonshareholder of GB&Co. who participated in the exercise of the Gellman option was Bernard Kanton, Golkin's personal attorney. Kanton accepted the right to participate in the option in lieu of his fee. Albert's and Kanton's shares were made up from the shares of those who elected not to participate in the option, along with some shares that were attributable to Saul Golkin and Milton Bomback. Bomback was not a shareholder of GB&Co. in November or December of 1967, his interest having been purchased previously by Saul Golkin. Apparently, he was offered participation in the option because of his prior association with the firm.
- 9/ The stock was sold in lots of less than 50,000 and, although the price received ranged between eighteen and nineteen dollars per share, the bulk of the shares sold at eighteen.
- 10/ The Court has examined the materials contained in Plaintiff's Exhibit 2 and finds them to be protected by the attorney-client privilege. Accordingly, defendant's objection to plaintiff's offer of Exhibit 2 into evidence is sustained. In addition, plaintiff's motion to reopen the trial is denied.
- 11/ Although Saul Golkin testified that prior to the exercise of the option he was informed by Robert Albert

of the latter's belief that Coleman had certain rights in the option, that he instructed Albert to inquire as to whether Coleman had an interest in subscribing and that Albert thereafter reported that Coleman did not, the Court finds the facts to be otherwise. Coleman testified that he was not contacted by Albert with respect to the option in 1967, and Albert did not recollect any such discussions with either Golkin or Coleman. In light of this testimony, the Court concludes that no such conversations took place.

12/ Although Albert's arrangement is embodied in a contract that is appended to the December 12, 1962 agreement (Exhibit A to the agreement) while Coleman's is not, this does not impugn the existence of Coleman's arrangement. Albert, in addition to having been an employee, was a shareholder of Divine & Fishman. Appended to the December 12 contract are agreements with four shareholders of Divine & Fishman under which D&F redeemed their stock. Coleman, of course, owned no D&F stock.

13/ It also appears that the Nominee Agreement was signed by Seymour Fishman on behalf of Divine & Fishman, Inc., at a time when the firm name already had been changed to Golkin, Divine & Fishman, Inc. However, this is consistent with the predating, in that Divine & Fishman, Inc. was the firm name on July 31, 1962.

14/ It subsequently came to light that the date chosen was incorrect.

15/ Implicit in this conclusion is the finding that the Nominee Agreement is a sufficient memorandum of Coleman's compensation agreement with respect to the Gellman option to satisfy the statute of frauds. U.C.C. § 8-319.

16/ The parties have consented to the application of New York law to the instant controversy.

17/ The Court notes that there is no contention that Golkin's acts constituted the tort of conversion. Compare Hinkle Iron Co. v. Kohn, 229 N.Y. 179, 128 N.E. 113 (1920); AMF Incorporated v. Algo Distributors, Inc., 48 App. Div. 2d 352, 369 N.Y.S.2d 460, 465 (2d Dep't 1975); Fleck v. Perla, 40 App. Div. 2d 1069, 339 N.Y.S.2d 246, 248 (4th Dep't 1972).

18/ Although none of the cases cited in the text involve a situation precisely like the one before the Court, I find them sufficiently analogous to warrant their application here.

19/ In this regard it must be remembered that plaintiff does not contend merely that Golkin breached any duty due him by the manner in which he exercised the option. For if this were the case, plaintiff would have no claim at all. GB&Co.'s assets were de minimis and it could not have exercised the option itself. This being so, the issue is whether, having made the decision to exercise the option by soliciting outside participation, Golkin should be held individually liable for not offering Coleman the opportunity to participate.

20/ Plaintiff contends that Golkin had a duty to inspect the corporate records to discover what interests, if any, existed with respect to the Gellman option. However, there is no evidence before the Court which indicates that a copy of the Nominee Agreement, embodying plaintiff's interest, is contained in those records.

21/ In light of the uncontradicted testimony that the option stock eventually was sold for between 18 and 19 dollars per share, the Court finds the profit per share to be 16 dollars.

A 0274

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN COLEMAN,

Plaintiff,

-against-

GOLKIN, BOMBACK & CO., INC., a
Corporation; and Saul Golkin,

Defendants.

NOTICE OF MOTION

LORD. DAY & LORD.

ATTORNEYS FOR
Plaintiff

25 BROADWAY

NEW YORK, N. Y. 10004

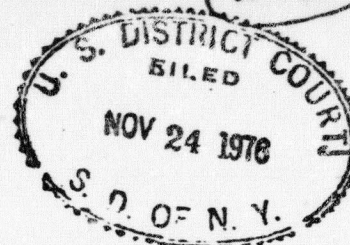
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Randall Kass



The within motion, for a
new trial or, in the alternative,
for rehearing, is hereby denied.

So Ordered:

John M. Cannella
U.S.D.J.

Dated: November 23, 1976

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MICROFILM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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-----X
JOHN COLEMAN,

Plaintiff,

-against-

GOLKIN, BOMBACK & CO., INC., a
Corporation; and Saul Golkin,

Defendants.
-----X

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72 Civ. 875(J.M.C.)

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the appended affidavit of STEPHEN J. CRIMMINS the undersigned will move this Court on November 11, 1976, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, before the Honorable John M. Cannella, U.S.D.J., in Room 1001, United States Courthouse, Foley Square, New York, New York, for an order pursuant to Rule 59(a) of the Federal Rules of Civil Procedure granting plaintiff a new trial and rehearing, and for an order pursuant to Rule 15(b) of the Federal Rules of Civil Procedure granting plaintiff leave to amend the Complaint herein to conform to the evidence adduced at trial, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
November 1, 1976

Yours, etc.
WINSTON & STRAWN
Co-Counsel for Plaintiff
Suite 5000
One First National Plaza
Chicago, Illinois 60603
(312) 786-5600

LORD, DAY & LORD
By James L. Lord
Of Counsel
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25 Broadway
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(212) 344-8480

A 0276

TO:

BANDLER & KASS
Counsel for Defendant
605 Third Avenue
New York, New York 10016
(212) 972-1100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
JOHN COLEMAN,

Plaintiff,

: 72 Civ. 875 (J.M.C.)

-against-

: AFFIDAVITGOLKIN, BOMBACK & CO., INC., a
Corporation; and Saul Golkin,Defendants.
-----x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

STEPHEN J. CRIMMINS, being duly sworn, deposes and
says:

1. I am a member of the Bar of this Court and an associate of the firm Lord, Day & Lord, co-counsel for plaintiff in the above-entitled cause. I make this affidavit in support of plaintiff's motion for a new trial and rehearing, pursuant to Fed. R. Civ. P.59(a), and for leave to amend the Complaint herein to conform to the evidence adduced at trial, pursuant to Fed. R. Civ. P.15(b).

2. This action was tried before the Court without a jury on August 4, 1975. On October 22, 1976 the Court entered judgment against the defendant corporation but denied recovery against the individual defendant.

3. The relevant facts and the reasons supporting plaintiff's instant motion are fully set forth in plaintiff's memorandum of points and authorities submitted herewith.

Stephen J. Crimmins
STEPHEN J. CRIMMINS

Subscribed and sworn to before
me this 1st day of November, 1976.

Frances M. Mazdra
NOTARY PUBLIC
FRANCES M. MAZDRA
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-26-710
Qualified in Queens County
City of New York, N.Y.

